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THE

RULES AND ORDERS

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL,

AND OF

The Court for the Relief of Insolvent Debtors,

TO WHICH ARE PREFIXED,

THE CHARTER OF JUSTICE, STATUTES, AND ACTS OF THE GOVERNMENT OF INDIA, RELATING TO THE SAID COURTS.

Edited by

W. H. SMOULT AND E. B. RYAN, ESQRS.

WITH THE SANCTION OF

THE HONORABLE THE CHIEF JUSTICE.

IN TWO VOLUMES.

VOL. I.

CONTAINING THE CHARTER OF JUSTICE AND THE SEVERAL STATUTES RELATING TO THE SAID COURTS, BROUGHT DOWN TO THE 6 & 7 WILL. 4. C. 77. AND THE ACTS OF THE GOVERNMENT OF INDIA TO ACT NO. XXII OF 1839, INCLUSIVE.

CALCUTTA:

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1839.

TO

THE HONORABLE

SIR EDWARD RYAN, KNT. CHIEF JUSTICE,

THE HONORABLE SIR JOHN PETER GRANT, KNT.

AND

THE HONORABLE SIR HENRY WILMOT SETON, KNT.

JUSTICES OF THE SUPREME COURT OF JUDICATURE

AT

FORT WILLIAM IN BENGAL,

THIS EDITION

OF

THE RULES AND ORDERS OF THE COURT

IS RESPECTFULLY DEDICATED,

BY

THEIR LORDSHIPS MOST OBEDIENT

AND HUMBLE SERVANTS,

THE EDITORS.

Calcutta, the 22d October, 1839.

PREFACE.

Before entering upon the immediate object of this publication, it may not be unimportant shortly, to notice some of the Charters granted to the several East India Companies previously to the establishment of the Supreme Court at Fort William, with reference to the provisions thereby made for the administration of justice in India.

The Charter of the 43rd of Elizabeth to the first Company and the subsequent Charters previous to that of the 13th Charles II. contain no provisions of this nature, except for the Government of the Company itself.

The Charter of the 13th Charles II. empowered the then Company *to appoint Governors, and other Officers to govern their plantations, forts, fortifications, factories or colonies,* and the Governor and his council were empowered *to judge all persons, belonging* to the said Governor and Company *or that should live under them, in all causes whether civil or criminal, according to the laws of the kingdom, and to execute judgment accordingly.* And by another Charter of the 20th Charles II. being the Grant of the Island of Bombay, *the Company were authorized to make laws for its Government extending to the penalty of death, and to appoint Judges, and to establish there Courts and forms of judicature, as used in the realm of England.*

The Charter of the 25th Charles II. by which the Island of St. Helena was granted to the Company, contains the like provisions as in the last mentioned Charter.

By the 35th Charles II. the Company were empowered to erect Courts of Judicature, "consisting of a person learned in the Civil Laws and two merchants, who were to decide according to equity and

"good conscience, and according to the laws and customs of mer-
"chants." And similar provisions were contained in the subsequent Charters down to the period of the union of the old and new Companies.

The first Charter granted to the united Company, was that of the 13th George I. in 1726.

By this, a Mayor's Court was established at each of the settlements, "to be a Court of record, to try, hear and determine all civil suits "between party and party that should arise within the towns of Ma-"dras, Bombay and Calcutta, or within any of the factories subject "thereto, against all persons then residing, or who at the time of "action accrued did or should reside, or be within the said towns or "the precincts *districts** or territories thereof, and to determine "according to justice and right."

An appeal was given to the Governor and Council, whose decision was to be final for all suits under 1000 Pagodas, and if exceeding that sum, an appeal was given to the King in Council.

The Criminal Jurisdiction was given to the Governor and Council, who were appointed Justices of the peace, with power to hold Courts of Quarter Sessions and Oyer and Terminer and gaol delivery, for the trial of all offences, except treason, committed within the said towns *or within any of the factories subordinate or within ten miles of the same.* They were also empowered to grant Probates of Wills. And by a Charter of the following year, all fines imposed by the Courts created by the foregoing Charter were granted to the Company.

By the Charter of the 26th George II. in 1753, upon the surrender of the previous Charter, the Mayor's Courts and the Court of Oyer and Terminer and gaol delivery were again established at the three settlements, and similar provisions made, except that the Civil Jurisdiction of the Mayor's Court was confined to suits not between Indian natives *of the respective Towns,* which were to be determined among

* A Sheriff is therein previously appointed for the towns and *districts* and within 10 miles thereof.

themselves, unless on consent, or the value did not exceed 5 Pagodas, as to which jurisdiction was given to a Court of Requests, and the Criminal Jurisdiction of the Courts of Oyer and Terminer was stated to be, for the trial of offences committed *within the said towns or within any of the factories or places subordinate thereto*, omitting "or within 10 miles of the same."

The seventh report of the Committee of Secrecy appointed to enquire into the state of the East India Company, dated the 6th of May, 1773, at page 323, details the state of the country judicatures throughout the province of Bengal, as they subsisted under the ancient constitution of the country, or as they had been affected or altered by the Company, and the state of judicature existing in the settlement of Calcutta, and in the factories and districts depending upon it, partly derived from the constitution of the country and partly established by the Charters of Justice.

The report then proceeds to observe upon the constitution of the Mayor's Court, and remarks "that although it is bound to judge, at "least where Europeans are concerned, according to the laws of "England, yet the Judges are not required to be, and in fact have "never been persons educated in the knowledge of those laws by "which they must decide; and that the Judges were justly sensible of "their own deficiency, and that they had therefore frequently applied "to the Court of Directors, to lay particular points respecting their "jurisdiction before Counsel, and to transmit the opinion of such "Counsel to be the guide of their conduct."

This report led to the Charter establishing the Supreme Court at Fort William.

We now proceed to the more immediate object of this publication—

The original Rules and Orders of the Supreme Court are understood to have been drawn up in England, at the same time and probably with the same sanction as the Charter, which was framed under the high authority described in the note upon that document in the first page of this work; but it is supposed that they were first drawn by Sir. Elijah Impey, and afterwards revised by him on his voyage to

India; we have, indeed, his own account of one rule that was framed by him on board-ship* extracted from the MSS. notes of Mr. Justice Hyde, to which we shall have occasion to refer hereafter.

Since the establishment of the Court in 1774, there have been five editions of its Rules and Orders published at Calcutta, with the Charter and the various Statutes relating to the administration of justice in India.

The first edition was published in 1789—the second in 1798—the third in 1803—the fourth in 1818 –the fifth in 1829—and continued to the year 1832.

There are only two complete series of these several editions, it is believed, extant; one in the possession of the present Chief Justice, and the other collected and arranged by Mr. Smoult in four volumes, and presented by him to the Bar Library.

The three first editions were compiled with care and accuracy. In the preface to the first edition the Editors intimate, that the inconvenience arising from inaccurate and imperfect manuscript copies of the rules had led to that compilation; and in pages 109 and 167, they refer to a report of the Select Committee of the House of Commons, in which the rules had appeared. The reports of that Committee were re-printed by order of the House in 1804, and in the Appendix to a report dated the 8th May 1781, at page 59, the Charter and Rules and Orders appear at length, and correspond in all material respects with the edition published in Calcutta. The fourth edition is very inaccurate and has never been referred to as of any authority.

The fifth edition was compiled by Mr. Longueville Clarke, with great care and labour, and no pains were spared by him to render it more useful to the profession than any of its predecessors, by the introduction of various decided cases and many valuable notes; and the profession are further indebted to him for continuations, from time to time, of the

* See the note in Smoult's collection of Orders p. 250. In 1777 on a motion for judgment as in case of nonsuit, Impey C. J. observed—"This rule was contrived by me on board of ship, because the charter has not provided any thing in the stead of carrying down the *nisi prius* record by proviso."

further rules that were passed and the subsequent statutes and decisions to the year 1832.

Although the late revision of the rules, consequent upon the new orders of the court of Chancery, and the alterations introduced into the practice and pleadings of the courts of Common Law at Westminster, by the late acts and rules and orders of those courts which have been extended to the court here, has rendered a new edition of this work necessary, yet still Mr. Clarke's edition and continuations are far from being superseded by the compilation now presented to the profession, and we are desirous of calling attention to the fact, in order that they may not be led to this supposition, by the circumstance of the new Rules and Orders having abrogated the former ones.

It will be seen, that reference is made in the margin of the present edition to many of the former rules, as the foundation of the new ones, some of them are in fact revived, others varied, and it may often be necessary to contrast the alterations with the original rules. The notes and decided cases must continue to be as valuable as ever.

Mr. Clarke has kindly permitted us to transfer to these pages a portion of his excellent preface and to use his notes, some of which are introduced and distinguished by the letter [C.] being affixed.

The following observations are taken from that preface.

With respect to the Charter of 1726, he observes —

"It was by this Charter, that all the common and statute law at that time extant in England, was first introduced into the Indian presidencies;* and it is to the doctrine which has been applied to

* As far as relates to this presidency, this is the commonly received opinion, and has been always acted upon by the Judges of the Supreme Court. Chief Justice East in his evidence before the House of Lords in 1830, observes upon this subject, "The period at which the general statute law stops in regard to this presidency, is "that of the constitution of the Mayor's Court at Calcutta, when, those who esta-"blished that construction said, upon the doctrine of Calvins' case, that the British "law was then first given to this, as to a British Colony, and that as such it could "not be included in any subsequent statute unless especially named." But certainly, if this question were now to be considered for the first time, it might be doubtful how far this construction could be supported. Without entering further into the question, we would refer to the words of the Charter of the 13th of Charles II. before cited.

this Charter, that the inhabitants of the presidencies have been both injured and benefited by an exclusion, with some few exceptions, from all the Parliamentary enactments passed since that period.

"The authority on which the Indian courts have refused to apply the English statutes, which have been enacted, since the granting of the Charter of George the First, and in which their extension to India is not especially declared, is to be found in Calvin's case, 7, T. R. 1. But Chief Justice East has stated "the rule of law in this case to be merely technical, that its application is doubtful, and that it is difficult to imagine, that the result which has been produced could have been foreseen or intended." There have been persons who have questioned some of the doctrines contained in the report of this case, and who have considered, that legal principles had less to do with the decision, than the peculiarities of the case and the politics of the times. It is certain, that when the first James sat on the English throne, more important privileges were conferred on the Scottish emigrants, than they obtained by the decision in Calvin's case, and that too, by more difficult means than the mere perversion of law; and when, in addition to this, we find the learned reporter recording, "that it was to the honor of the state, that no commandment or message was delivered to the Judges, to incline them to an opinion," it excites a suspicion which is at variance with the belief, that the judgment of the Court was altogether devoid of bias. But whether the doctrines in this case, or their application to India, be right or wrong, it will require the interference of Parliament, to alter a practice, which has for half a century received the sanction of so many Judges, Parliamentary authority can confirm the past and fix the future; but mere judicial interference, which of necessity must be opposed to a series of judicial decisions, would involve both in difficulty and doubt.

"The town of Madras having surrendered, in September 1746, to the forces under Labourdonnais, the Mayor's court ceased to exist. Its members were dispersed, and the Corporation was considered to have been dissolved. The town having been restored to the English

In August, 1749, by the treaty of Aix la Chapelle, the East India Company by indenture, dated the 6th of January, 1753, surrendered to George the Second the letters patent, which had been granted to them in the 13th year of the reign of the late King, and also other letters patent, which they had obtained in the first year of the reign of the then Sovereign, extending the powers of those which they had received from his predecessor. On the surrender of these grants, the Company obtained letters patent, dated the 8th January, 1753, establishing new Corporations at each of the three presidencies, and constituting a Mayor's court in each of them,* similar to the provisions in the former Charter.

"In 1773, an Act of Parliament was passed, the 13 Geo. III. c 63, empowering His Majesty to establish a Supreme Court at Calcutta, to consist of a Chief Judge and three other Justices; and the Court was accordingly constituted by letters patent, dated the 26th March, 1774; and it is under this Charter that the Supreme Court is now held. By the 21 Geo. III. c 70, §§ 8, 9, and 10, the jurisdiction of the Court as declared in the 14th section of the 13 George III. was explained and defined; and by the 37 Geo. III. c. 142, the number of Judges was limited to three.

"In the year 1800, the 39 and 40 Geo. III. c. 70 empowered His Majesty to establish a Supreme Court at Madras; and by letters patent, dated the 26th of December, 1800, the court was accordingly constituted, to consist of a Chief Justice, and two Puisne Judges. The Prince of Wales' Island was the last settlement belonging to the Company, at which a King's court was established. The proposition had been strongly opposed at home, and although it had been carried in the Court of Directors, it was negatived in a General court of Proprietors on the 18th June, 1805. In September following, it was again brought forward and carried, and a Recorder's court was established by letters patent, dated the 25th March, 1807.

"The next material change was occasioned by the 4 of Geo. IV. c. 71, by which His Majesty was again empowered to create another

* And also courts of Oyer and Terminer and gaol delivery.

Supreme Court in India, and by his letters patent the Supreme Court at Bombay was accordingly established. It is remarkable, that the 7th sec. of this Act enacts, that the courts at Madras and Bombay shall have the same powers as the court at Fort William; but there is no similar enactment in favor of the court here, nor is it directed, that it shall be vested with the same powers as may be exercised by the courts at the other presidencies.

"The island of Singapore and the town of Malacca, having been ceded to the English by the Dutch Government, in March 1824, were afterwards transferred to the India Company. In consequence of this alteration, the Charter granted in March 1807, was surrendered by the Company to His Majesty, who, in pursuance of the 6 Geo. IV. c. 85, §. 19, issued letters patent, by which a Court of judicature was constituted; and it was directed that it should consist of the Governor and the resident Counsellor, and one other Judge, who is to be styled the Recorder.

"I have now given a sketch of the establishment of His Majesty's different Courts in India. They were introduced for the sake of the British population, they have followed them to every spot where a considerable settlement has been formed, and have acquired more extensive powers, in proportion as the increased resort of the native English has added to the importance of the place. Had it been otherwise, then, every Englishman in India would have remained subject to the laws of a foreign and infidel state."

"I have already observed, that since 1726, there has been no general extension of British law into India The various acts of Parliament have only been so many partial additions to the code which was then introduced, while the different Charters of Justice are not to be considered as acts of legislation, but only as affording the authority and means for carrying legislation into effect.

"The law which now obtains in the Supreme Court may be classed under seven distinct heads.

1.—"The common law as it prevailed in England in 1726, and which has not subsequently been altered by statutes, especially extending to India.

2.—"The statute law which prevailed in England in 1726, and which has not subsequently been altered by statutes, especially extending to India.

3.—"The statute law expressly extending to India, which has been enacted since 1726, and which has not been repealed.

4.—"The civil law, as it obtains in the Ecclesiastical and Admiralty Courts in England.

5.—"Regulations made by the Governor General in Council* under the 13 Geo. III. c. 63, §§. 36 and 37; 39 & 40 Geo. III. c. 79, §. 18; and 53 Geo. III. c. 155, §§. 98 and 99.

6.—"The Hindoo law, in all civil actions in which a Hindoo is defendant.†

7.—"Mahomedan law, in all civil actions in which a Mahomedan is defendant.

"To administer justice under these various codes of law, the Supreme Court is, by its Charter, vested with five distinct jurisdictions, Criminal, Civil, Equity, Ecclesiastical, and Admiralty, and it is enjoined to accommodate its process, rules and orders, to the religion and manners of the natives, so far as may consist with the due execution of the laws and the attainment of justice.

"It must be obvious to every person, that the greatest difficulty must attend the bringing to perfection, a system so complicated, as embraces the dispensation of so many codes of law, and the exercise of so many jurisdictions. It is left to the Judges to add, to abrogate and alter: but as regards this purpose they arrive in India with much

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* For instance, the Stamp Regulation, that relating to the widening of streets and summoning Juries for the purpose, and other regulations registered in the Supreme Court.

† See the terms of the 17 §. 21 Geo. 3, c. 70, and Mr. Clarke's note, at page 22 of his edition; and see the 37 Geo. 3, c. 142, §. 13, as to Madras and Bombay.

to learn, and they generally leave it before they feel sufficient confidence in their experience to attempt improvements. A very striking example of this may be furnished in the practice which, till lately, prevailed of administering oaths to Hindoo witnesses. Under the 13th sec. of the Charter, oaths are to be administered to persons who are not christians or quakers, in such manner and form, as the court shall esteem most binding on their consciences; and the court invariably insisted on all Hindoo witnesses, with the exception of those who were pundits, being sworn on the water of the Ganges. The grand jury frequently represented, and the Judges invariably admitted the obstacles which this practice created to the administration of justice, and the hardships it occasioned to conscientious individuals.

"Respectable witnesses were deterred from entering the court, and those who came were not unfrequently committed, because they would not act as their consciences forbade them; and I have more than once seen the anomaly of a Judge committing a witness, while he gave him credit for the conduct by which the punishment was incurred. Yet no attempt was made to remedy the evil, and from the institution of the court until Sir Charles Grey became Chief Justice, this practice, so injurious to the public, so oppressive to individuals, was reprobated, deplored, and adhered to. Almost the first act of the present Chief Justice, Sir Charles Grey, was to exercise that power which it is obvious the Charter intended to confer; and it was directed that the witnesses should be sworn in whatever manner was most binding on, and not in that, which most outraged his conscience, and now, if he objects to the Ganges water, the pundit administers the oath in some other form.

"No alteration could have been made in the practice of the Court more essential to the ends of justice, than that which relates to administering oaths to Hindoos; and when it is remembered, that the change was not effected, till after a lapse of fifty years, it bears me out in my statement respecting the slow progress which improvement has made in the Court."*

* The Stat. 9, Geo. 4, c. 74, §. 36, provided a fuller remedy for this defect, and the following are the remarks of the present Chief Justice upon the alteration of

In reference to the state of the Statute law of India as described by Mr. Clarke, the following observations of Chief Justice East, printed in the Appendix to his evidence before the Committee of the House of Lords, in 1830, are important. These observations he then

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the law thus introduced, in his charge to the grand jury, at the 2d Sessions of 1829, for which see *Appendix*.

"There are many provisions in this Act, altering and amending the law of evidence.

"The affirmation of Quakers and Moravians, is to be received in criminal as well "as civil cases. The natives of any country within the limits of the Charter of the "United Company, who may be required to give evidence in any case, criminal or "civil, and who shall object on the ground of any religious scruple to take an oath "in the usual form, may, if the Court in its discretion shall think fit, be permitted "to make a solemn affirmation or declaration in such manner and form as the court "shall deem sufficiently binding on their conscience. This affirmation or declara-"tion when taken, is to be of the same force and effect in all courts of justice "and other places, where, by law, an oath is required, as if the party had taken an "oath in the usual form; and if convicted of having made a false affirmation or "declaration, the party is subject to all the pains and penalties of perjury. Every "person acquainted with the habits and customs of the natives, and with the great "reluctance, many of the most respectable amongst them, have to taking an oath in "any form, will think this a most salutary provision; permitting the Court in its dis-"cretion, to receive the testimony of natives, without obliging them to do what is "repugnant to their feelings; while, at the same time, the ends of justice are secured, "by making false affirmations, subject to the same punishment as false oaths."

The present state of the law on the subject of oaths is however by no means satisfactory, and requires, as it seems to us, some further legislative provision. The Queen's and Company's courts under the above section of the 9 Geo. 4, are directed in cases, where Quakers or Moravians are required to give *evidence* in any civil or criminal matter to receive their solemn affirmation in the form given in the Act; but the provisions of the 3 & 4 Will. 4, c. 49, have allowed, in England, affirmations to be made by these persons *in all cases* in lieu of oaths, and have not confined it to the giving of *evidence*. An *answer* therefore may be received in Chancery in England from a Quaker or Moravian without oath, but here there is no such power—and the same rule would apply to *affidavits*. Again, as to Hindoos and Mahomedans, Act No. 5, of 1840, has provided that instead of an oath or declaration every individual of those classes, within the territories of the Company, shall make affirmation to the following effect. "I solemnly affirm in the presence of Almighty God, that what I shall state, shall be the truth, the whole truth and nothing but the truth." Sec. 4 provides, that this Act shall not extend to any declaration or affirmation made in any of Her Majesty's courts. The result is, that oaths are required and must be taken by Hindoos or Mahomedans in all cases in the Supreme Court, unless they object on the ground of any religious scruple, when the court at its discretion may allow an affirmation, whereas, in all the Company's Courts and in the Court of Requests, and before Justices of the Peace in Calcutta, oaths are absolutely abolished. In this state of things, it might perhaps happen that the affirmation of a deceased witness, taken by a Magistrate, might be read in evidence in the Supreme Court, although the witness himself if living and not objecting, must have been examined on oath—another discrepancy is worth observing in the form of affirmation adopted by the Supreme Court, and that which is directed by the Act No. 5, of 1840 - the latter containing an invocation of the Deity—the former omitting it. In the Supreme Court, the form is "I. A. B. do solemnly declare and affirm, that I will speak the "truth, the whole truth and nothing but the truth, touching &c."

referred to, as having been addressed to the President of the Board of Control, after he had been about two years in India.

"In order to shew the actual inconvenience of this state of things, "it is sufficient without the parade and tedium of turning over the "prolific indexes of the Statute books, to mention several instan-"ces which have in fact occurred during the two years I have sat "on this bench, wherein the deficiency was felt to the disparage-"ment of justice—he then details several, and adds

"The remedy for these and similar defects seems of two sorts:

1st.—"To pass a general law extending all past statutes, from the "13 Geo. I. inclusive (in continuation of former provisions,) and all "future statutes of England, to this country: leaving to the Supreme "Court to exclude, by construction, such statutes or parts of statutes, "as may in their judgment, appear to be of a character merely local "for England, &c. and not applicable to the condition of India.

"Though this would seem to be giving a great latitude of discre-"tion to the Court, yet it is rather in sound than in sense, and is no "more than was originally confided to it, in respect of the statute "law in England down to the 13 Geo. I.

"But it can rarely happen, that any serious difficulty should occur "in the exercise of such a discretion, confined to the negative power "of rejection, which in common sense would be exercised whenever "there was a serious doubt; and sure I am, that with the ordinary "habits of caution belonging to every British Judge, more parti-"cularly in criminal matters, no serious mischief is to be apprehend-"ed, but rather a judicious selection is to be expected, at all events "the power would be guarded by saving and excepting its applica-"tion in every case against a positive statute made for the express "purpose of binding India; which will secure all the particular pro-"visions already given for our Government, and provide for every "future enactment for our separate use."

2nd.—"The other remedy that I would propose, is rather for the "benefit of the native inhabitants of Calcutta; which is, to extend "the power of legislation at present conferred upon the Governor

"General in Council with the consent of the Supreme Court, by "enabling them to make general local laws, (such as in fact the "Governor General and Council alone have been accustomed to "make for the Mofussil;) not merely confined to purposes of Police, "but extending to general objects, which would include laws affect-"ing the native inhabitants in the points, which in another paper I "have suggested, that they stand in need of, as well as in others "which may occur.

"The necessary exceptions to such an enlarged power would be, "that no laws should be made contrary to the duty of allegiance, "nor contrary to any express law made or to be made by Parlia-"ment, for the Government of British India, and that the laws "should be equal in all matters of common concern between British "and native subjects, for the common good without favor or dispar-"agement to either.

"There may be this further check, that before any local law thus "made, should be put in force it should be published in the Govern-"ment Gazette, once in the English and once in the Bengalee lan-"guage, and should thence be transmitted home; (together with "any appeal therefrom) to be approved by the King in Council; "and if approved, remitted to this Government for the purpose of "being put in force, after another similar publication made."

Some of the evils complained of by Chief Justice East, in consequence of the English statutes not extending to this country, were remedied by Mr. Wynne, who introduced into Parliament the Act 9 Geo. 4. c. 74, for improving the administration of criminal justice in the East Indies, and also the Act 9 Geo. 4. c. 73, for the relief of Insolvent Debtors.

The general change made by the former Act in the criminal law, as administered by the Supreme Court in India, will be seen stated fully in Chief Justice Ryan's charge to the Grand Jury, at the second Sessions of 1839, inserted in the *Appendix*, in which are also observations on the change in the relation between debtor and creditor, which the Insolvent Act has effected.

The Charter Act 3 & 4 Will. 4, c. 85, has now however enabled the local legislature to extend to this country the benefit of all English statutes, and in exercise of their general power of legislation, the Government of India has, in communication, it is understood, with the Judges, introduced many important statutes in force in England, which did not extend to this country. We would particularly advert to Act No. 25 of 1838, relating to Wills, Act No. 28 of 1838, relating to perjury, and especially to Act No. 31 of 1838, relating to the improvement of the administration of criminal justice, the effect and bearing of these Acts are fully commented upon in Chief Justice Ryan's charge to the grand jury in February 1839, which will also be found in the *Appendix*. Many other important Acts have also been passed, as connected with the administration of Justice in the Supreme Court, and they will be found in this edition.

Having now drawn our observations upon the constitution of the Court to a close, we proceed to state shortly, what has been done by the Judges from time to time in order to reduce the expense of legal proceedings, and of the establishments of the Offices and of the Court generally.

In the year 1798, Sir John Anstruther, then Chief Justice, in pursuance of the Act of the 37 George 3, c. 142, and under the directions of the Court of Directors, issued a precept to the officers of the Court, calling upon them to make a return of the amount of salary and fees each had received for three years preceding, and having received the returns, he and the other Judges took them into consideration, and reported their opinion that some of the offices might be discontinued, and that others might be consolidated.

They observed amongst other things upon the expence of executing process beyond Calcutta, and remarked as follows :—" With regard " to process against the person—the Sheriff must be left at liberty to " execute it as he pleases, information of its having issued would be " notice to the party to abscond, but with respect to summons, and " executions against the goods they were of opinion, that except in

"cases of difficulty, but one officer should be sent to execute such "process up the country, and that he should wait upon the nearest "Magistrate, and inform him of the process which he was ordered "to execute,—that the Magistrate should be directed to send a "peon with the officer, which would both give the countenance "of Government to the execution of the process and be an effec-"tual check to the absuse of it,—that wherever it should be "necessary that peons should be employed by the Sheriff for "keeping possession, they should be furnished by the Magistrate, "at the requisition of the officer, he paying their fees and be-"ing responsible for their conduct—that to enforce these regula-"tions nothing more was required than that Government should "give the necessary directions to the Magistrates, who would "incur no possible risk in conforming to them. With regard to the "suitors, and chiefly to the defendant, who usually suffered most, much "expence would be saved; and that thus one officer while he was "neither afraid of resistance nor rescue, might perform what was then "done by many."

The answer of the Government was as follows:—"We have perused "with sincere satisfaction the salutary regulations which the Judges "have adopted for reducing the expence of law-suitors, and we shall "readily give the most effectual aid in the execution of the process "of the Supreme Court, by passing a law binding the Judges of the "several provincial courts to assist in the execution of that process "in the cases and in the manner suggested in the report. Being per-"suaded that the Judges will at all times be disposed to contribute "their assistance to the Government in promoting the public good, "we request to be favoured with their sentiments with respect to "the charges incurred on account of the law officers of the Com-"pany—of the establishment of Justices of the Peace—of the Police "of Calcutta—of the Court of Requests—and of the Coroner's office "—and we shall be happy to be furnished with any suggestions which "may occur to the Judges with regard to the number and the duties "of the Justices of the Peace, the regulation of the Police, and of the "office of the Coroner, and the better administration of Justice in

"the Court of Requests, if the continuance of such a Court be deem-
"ed necessary."

The Court of Directors on the 11th June 1800, thus addressed the Government.

"We have perused with great pleasure the letter addressed to you
"by Sir John Anstruther, Chief Justice of the Supreme Court, with the
"report therein referred to by the Judges of that Court, pursuant to
"Act of Parliament, and have to express our satisfaction with
"respect to the matter of the report, and our approbation of your
"resolutions thereon, confirming the abolition of the several offices
"and salaries proposed to be immediately or eventually abolished,
"and also the establishment of salaries and allowances recommended
"by the Judges to be annexed to the several offices proposed to be
"continued. We entirely concur with you in the opinion you have
"formed of the salutary regulations which the Judges have adopted
"for reducing the expences of law suits, and approve of the assur-
"ances you have given them of affording the most effectual aid in the
"execution of the process of the Supreme Court, by passing a law
"binding the Judges of the several principal Courts, to assist in the
"execution of that process, in the cases and in the manner suggested
"in the report."

In the year 1803, the Judges addressed Government as follows:

"The Judges have lately been engaged in taking a review of the
"rules and orders of the Supreme Court for the purpose of transmit-
"ting them to His Majesty in Council for his approval. They were
"framed at the very first institution of the Court, and required to be
"adapted not only to the improved modern practice in England,
"but to be better suited to the situation of the natives here. In the
"progress of the work their attention was called to the table of fees
"and they found it both imperfect and inaccurate, they have now,
"they hope, corrected it and transmit it to your Lordship in Council,
"for your approbation agreeable to the Charter."

The Government and Court of Directors expressed their entire approbation of what the Judges had then done, and it has ever since

been the opinion of the Bench and the profession, that Sir John Anstruther's alterations were most salutary and judicious, and the best proof of this is to be found in the circumstance of the rules, as altered by him, having remained in force without any variation and almost without any addition to them being considered necessary for a period of upwards of twenty years, thus confirming the soundness of the principles upon which they were originally framed and subsequently revised.

In the year 1828, an order was passed by the House of Commons calling for "a return of the amount of salary and emoluments of every kind received by the several officers in the Supreme Courts at Fort William, Fort St. George, Bombay, and Prince of Wales' Island, on an average of two or three of the last years for which the accounts could be made up, distinguishing the amount of salary from fees and other emoluments, with a copy of the table of fees sanctioned for the officers of those Courts."

The Judges of the Courts of the different presidencies accordingly called for and received returns from their officers, which were completed and forwarded to the Board of Control by the Judges of the Court here in March, 1829.

In the year 1831, the Judges, Sir Charles Grey, then being Chief Justice, Sir John Franks, and the present Chief Justice determined on an entire revision of the charges made under the table of fees, and appointed a distinct officer to act as Taxing Officer, separating the duties of that department from the office of the Master, who had theretofore performed the duties of taxing the bills of the officers and attornies of the Court.

In pursuance of such resolution, the Judges sat in Chambers for some months, going over the bills of the officers for business done and comparing them with the table of fees. They were attended by the officers in rotation, and examined every item of the charges with reference to the table relating to each.

Every charge not strictly included in the table, however sanctioned by time and usage, was disallowed—and thus commenced the

first great reduction in the expences of legal proceedings and alterations tending to the benefit of suitors so far as respected the offices of the Court.

In the year 1835, the Judges, having for some time had under their consideration the subject of remunerating the officers by fixed salaries instead of fees, addressed Government on the subject, and the reply they received was as follows :—

"We beg leave to assure you, that we entirely approve of the "principle of remuneration for the officers of the Supreme Court "adverted to in your letter now acknowledged, and that we shall be "prepared to sanction any plan which you may recommend for remu-"nerating your officers by fixed salaries, provided that the Honorable "Company's Government be subjected to no additional expense "thereby."

The Judges conceived that by a well arranged plan involving this change, they would be able to effect a great, though gradual reduction in respect of the general charges of law proceedings, and they then called upon the officers for a return of all salaries and fees received by them for four years preceding, and the result is shewn in a letter addressed by the Judges to Government, dated the 25th April, 1836.

They recommended a consolidation of fifteen offices, and their tenure by four principal officers of the Court, and suggested a variety of changes and reductions in the subordinate offices, such as would finally limit the number of officers to eighteen, including the Judge's clerks, the attorney for paupers, the interpreters, and native officers, and making an ultimate saving of Rs. 2,24,123 or 48 per cent. on the then present expense, the immediate saving being not less than from 80,000 to 1,04,000 Rs. per annum.

The office of Counsel for paupers was abolished on the death of the then incumbent, and it now rests with the attorney for paupers to select any Counsel, he thinks fit, who may be willing to act in cases referred to him, and when he reports in favor of the party seeking the benefit of that establishment. a Judge makes an order according-

ly, and the Counsel receives his fees, as in ordinary cases, only when he succeeds.

The necessary result of this consolidation of offices and the other arrangements thus made for conducting the business of the Court is, to deprive the Judges of all future patronage of any value, except the nomination to the four offices to which the number has, by the union of the others, since the date of that arrangement, been gradually reduced, and the whole scheme has, in less than four years, been nearly accomplished, and none but men of professional experience will in future be competent to the discharge of the duties of those offices.

The Judges were also enabled to carry out their plans for the introduction of various other changes that they had long contemplated, amongst others, for reducing the charges in the rate per folio, in copying; engrossing and entering pleadings and proceedings, in all the offices of both courts, and the fees from sicca rupees to company's rupees: these measures were perhaps the most extensive in their effects that could have been adopted, and the orders carrying them into execution were passed by the present Chief Justice, Mr. Justice Grant, and Mr. Justice Malkin, on the 4th and 18th January, 1837, the result was, a reduction of one-half in charges which had been the principal source of expence as regarded the offices of the Courts.

The Government gave their full assent to the scheme proposed by the Judges, and approved of the salaries and remuneration fixed for the officers and establishments.

The Court of Directors in a dispatch dated the 18th September, 1839, expressed their opinion of the measures adopted by the Judges in these terms:—

"We are much gratified by the judicious and public spirited man-
"ner in which the Judges of the Supreme Court at Calcutta have
"carried into effect the suggestions conveyed to you in our despatch
"of the 10th of June, 1835, regarding the emoluments of the officers
"attached to that court, and we approve of the arrangements on the
"subject which have obtained your sanction."

From the first of January, 1837, the fees of all the offices have been paid into the Government Treasury, and the fund thus created has equalled the expectations of Government and the Judges, and it will lead to still further reductions in regard to those fees.

In the same year the Judges also directed their attention to the necessity of a complete revision of the former Rules and Orders of the Court, and the propriety of transferring to the court here such of the new orders of the Court of Chancery and rules and orders of the Courts of law at Westminster, as had been introduced by Statute and the Judges of those Courts, in consequence of the recommendation of the various reports made by Commissioners appointed by the Crown.*

These Rules and Orders were in the first instance collected, methodized, and adapted to this court by the present Chief Justice, and were printed and circulated amongst the profession and sent to the Judges of the other presidencies, and every publicity given for observation and comment from all, and from all parts; and afterwards the whole were taken into full deliberation and considered by the Judges, the present Chief Justice, Mr. Justice Grant, and Mr. Justice Malkin, and engaged their attention for some months, and at length they were duly made and passed on the 15th June, 1837, to take effect on the 22d October in that year.

In consequence of doubts expressed by Mr. Justice Grant as to the power of the court to effect some of the alterations, an Act confirming these rules and providing for the future introduction of new rules generally, as to pleadings and practice, was passed on the 29th of July, 1839, which will be found in this collection.

As this compilation contains the rules and orders of the Insolvent court as well as those relating to the Supreme Court, we shall very

* The several Reports of the Commissioners appointed to enquire into the state of the Court of Chancery, the Courts of Common Law, the Criminal Law, and the Law relating to real property.

briefly advert to the course which has been pursued with reference to that court.

The Acts that had been passed for the relief of Insolvent debtors in England, were occasionally extended by express enactment to this country, but it was not until July, 1828, that any act was passed expressly for the relief of Insolvent debtors in the East Indies, viz. the 9 Geo. 4, Cap. 73.

It is to be observed that this is not a mere Insolvent Act, but introduces some of the provisions of the Bankrupt Law of England as well as the *cessio bonorum* of the Civil and Scotch Law.

This Act was only to continue in force until the first of March, 1833, but has been continued by subsequent Acts down to the present time—the second section of that Act provides, that the Supreme Court shall have power from time to time to establish rules for the regulation of that Court, and in pursuance of that power, the present rules have been framed; they have been principally taken from the rules prepared by the Commissioners of the Insolvent Court in England, with some additional rules applicable to costs and other matters arising out of the more extended jurisdiction of this court. The notes annexed to the rules themselves give all further explanations on this head that appear to be necessary.

Before concluding our remarks it may be useful to notice the collections which have been heretofore made of the Charters and Statutes relating to India.

The first Charter for erecting an East India Company was that noticed in the commencement as granted by Queen Elizabeth, and is dated the 31st of December, 1601,* and in succeeding reigns that Company obtained various other Charters and grants, down to the year 1698.

In that year a new Company applied to Parliament, and William the III. granted them a Charter, dated the 5th September, 1698, under the

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See note as to this date, *post*.

designation of "*The English Company trading to the East Indies,*"* the former Charters having been granted to the original Company by the title of "*The Governor and Company of Merchants of London trading into the East Indies.*"

On the 22d July, 1702, an Indenture tripartite was made between Queen Anne of the first part, the old Company of the second part, and the new Company of the third part. The object of this was the union of the two Companies at the end of seven years, under certain arrangements *ad interim.* The old Company covenanted to surrender their Charters in two months after the expiration of the said seven years into the Queen's hands, and the Queen engaged to accept of such surrender, and from thenceforth the new Company was to be called, "*The United Company of Merchants of England trading to the East Indies,*"* whose affairs should be conducted by their own Directors, agreeably to their Charter from William III. in 1698.

Then followed Lord Godolphin's award between the two Companies, dated the 29th September, 1708, made in pursuance of an Act of the sixth year of Queen Anne, by virtue of which award the union was completed.

The first Charter granted to the United Company was that by George I. in 1726,—the next Charter was that of George II. in 1753,—and then came the Charter of 1774.

The principal Charters appear at length in a collection comprised in a quarto volume entitled "Charters granted to the East India Com-"pany from 1601, also the Treaties and Grants made with or ob-"tained from the Princes and Powers in India, from the year 1756 "to 1772," the Treaties and Grants are not in the only two copies we have met with, or as we believe to be found in Calcutta, although if enquired after at the India House we imagine they might be traced,

* The last Statutory designation given to the Company is by the 3 and 4 Will. 4, Cap. 85, Sec. 3, whereby it is enacted, that in all suits, proceedings and transactions they may be called "*The East India Company,*" their commercial character having then ceased.

but they appear to have been re-printed by "E. Cox and Son, prin-
" ters to the Company," in 1812, and others added, under the title of
" A collection of Treaties and Engagements with the native Princes
" and States of Asia from 1757 to 1809, with sunnuds or grants, &c."

When the collection of Charters was printed, or by whom, does not appear, though we suppose it to have been in 1777, and the Charter of Justice of 1774, is added, printed uniformly with the others. A copy is in the Bar Library at Calcutta.

This we believe to be the only uniform collection ever published of the Charters to that period, and to it are annexed two lists, copies of which we have appended to this preface, and they include (with the additions we have made to them of the subsequent Charters) every Charter that we have been able to trace as having been granted to the East India Companies, or to Her Majesty's Courts of Justice in India.

The several Charters establishing the Supreme Courts of Judicature at Madras, Bombay and Prince of Wales' Island are printed separately, and a general uniform publication of them appears in a quarto volume, printed, we believe by order of the Court of Directors, as they were severally issued, and these are included in our lists.

An abstract of the Admiralty Charter of the last mentioned court will be found in the *Appendix*.

The first collection of Statutes relating to the East India Company, was compiled by Mr. F. Russell, then we believe in the Judicial Department of the Board of Control, published in 1786, and re-printed, and subsequent Statutes added by Mr. Russell in 1793, both published in folio by the King's Printers, the title is " A collection of " Statutes concerning the incorporation, trade and commerce of the " East India Company, and the Government of the British posses-
" sions in India," to which is added, the By-Laws of the Company and "an abridgement of the Charters of the several East India Com-
" panies, and of the articles for their union, also of the Charters of

"Justice* for Bengal, Fort St. George, and Bombay, and other im-
"portant grants to which is annexed a table of the dates and titles
"of other grants from the crown to the several Companies, which
"are not comprized in that abridgement." A similar list appears in the reports of the Select Committee before referred to.

The next was a compilation of statutes only, omitting the abstracts of Charters, and was published in 1810, in quarto, and printed by the King's Printers "for the use of the East India Company."

This collection was followed by one published in 1817, in quarto, also printed by the King's Printers, "for the use of the East India Company." It brings down the statutes to that date, it gives the Charter of William the Third in 1698, at length, and abstracts of the other Charters, as given by Mr. Russell, down to the union of the two Companies, but does not give the Charters of 1726, 1753, or 1774, and omits the list of former Charters, and one or two grants which Mr. Russell includes. This compilation, as has been noticed, was printed for the use of the East India Company, and we presume by some gentleman belonging to one of the departments of the India House, who not being a member of the legal profession, did not consider it necessary to advert to the Charters of Justice, but the Charter of 1753 granted to "the United Company" contains other provisions affecting the Company only, and confirms some of their most extensive powers, which to this day are in full force and of vast importance to their political existence, though their commercial character is gone, namely, the power "to appoint Generals, to raise and maintain "standing forces, seamen and ships of defence, and repel inva-
"sions, &c." The Charter of 1774 abolished the Mayor's Court at Calcutta, but did not repeal the other provisions of the Charter of 1753, and the 37 G. 3, c. 142, abolishing the Mayor's Courts at Madras and Bombay, sec. 18, expressly declares "that the said Charter "shall, in all other respects, continue in full force."

* Viz. The Charters of 1726 and 1753, establishing the Mayor's Courts at Calcutta, Madras and Bombay, and the Charter of 1774, establishing the Supreme Court at Fort William.

Mr. Auber's "Analysis of the constitution of the Company and of "the laws passed by Parliament for the Government of their affairs "at home and abroad" was published in 1826, and is a valuable compendium, methodically arranged, and an excellent analysis of the subjects embraced.*

A compilation published in London during the present year has just been received in Calcutta, entitled "The law relating to India and the East India Company."

This work seems to have been intended to supply the place of the collection of 1817 and to have been compiled for the use of the East India Company.

It gives a list of the dates of such of the Charters as are abridged and prefixed to the former collection, and a short abstract of the only one which the former sets out at length, viz. that of William the Third in 1698. Following that of 1817 it omits all notice of the Charter of Geo. I. in 1726, and that of Geo. II. in 1753, and only casually refers to the several Charters of Justice establishing the Supreme Courts at Fort William, Madras, and Bombay, and adds to the collection some of the Acts of the Government of India.

It is to be regretted that the attention of the Editor was not directed, as it appears to us it could not have been, to the possibility of the various other Charters, not adverted to by him, being still of value, and that reference to some of them, even at the present day, might often be necessary, particularly as one of them, namely that of 1753, is only repealed so far as respects the abolishing of the Mayor's Courts.

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* It may here be noticed that all the references to the Charter of Elizabeth, mention it as dated in 1600. Mr. Russell so describes it—the collection of 1817 copies from him, and that of the present year follows the former. Mr. Auber gives it as dated the 30th of December, the others the 31st of December 1600.

The Charter as given in the collection which we have first mentioned, is dated the 31st December 1601, in the 43d year of Elizabeth's reign, and on referring to the Acts passed in that year, the month of December in the 43d year of her reign, is described as in the year of our Lord 1601.

As regards the Charters establishing the Supreme Courts of Judicature in India, they are only casually adverted to, although the several Charters of Justice form the basis of the entire present law of those Courts, the Charter of 1726, as has been shewn, having always been considered to have introduced into India the common and statute law then extant in England. No reference is made to the Courts of Justice established at Prince of Wales' Island, Singapore, and Malacca, an Admiralty Charter for which was granted so late as 1837. We can only account for these omissions by presuming that the collection was compiled for the use of the East India Company alone; and that the Editor was not aware of the necessity of introducing the Charters of Justice, to render his work valuable to all Judges and Barristers coming to India, to whom such documents are usually furnished by the Company.

We presume that some copies of the former compilations may still be found in the library of the India House; all of them are of value, and, we humbly conceive, indispensable to complete the libraries of professional men connected with India, and of the Company's Judicial functionaries at home and abroad; and it is to be hoped that the early Charters to which we have alluded may yet be reprinted, adding those of 1726 and 1753 and the several other Charters establishing Courts of Justice in India and Prince of Wales' Island.

We may likewise notice that the last collection contains, for the most part, certain sections only of the statutes relating to India and the East India Company, omitting repealed or altered sections, it omits some of the statutes given in the former collections and forming part of the law [introduced by the Charter of 1726 and] still in force, and it embodies statutes having, as they appear to us, no relation to India, nor to the East India Company, otherwise than so far as the alterations in the law generally affect it equally with other bodies Corporate,* nor forming part of the law applicable to India, hav-

* For instance, the Statute 2 & 3, Will. 4 c. 98, for the amendment of the law concerning the negotiation of Bills of Exchange, which did not extend to India, and was introduced, with others relating to the same subject, by an Act of the local legislature, viz. Act No. 6 of 1840.

ing been passed subsequent to that Charter, and no mention of India being made in them. At the same time it is a compilation which will be valuable to the East India Company, as a useful compendium of reference at the India House, and it is evident that great labour and industry have been bestowed upon it.

In addition to the Charters and publications already noticed, it has occurred to us that it might also be of use to give a list of the principal works relating to the administration of justice in India, including the Parliamentary reports and papers on the affairs of India, and the books usually referred to as authorities on Hindoo and Mahomedan Law. It will be found subjoined to the List of Charters.

We cannot conclude our observations without adverting to the valuable MSS. notes of decisions of the Court from the year 1774 to 1798, comprised in the note books of Mr. Justice Hyde and Sir Robert Chambers.

These are now in the possession of the Chief Justice into whose custody they came on the death of the late Sir Wm. Russell, to whom they were entrusted by Lady Chambers, the widow of Sir Robert and presented by her to the Supreme Court.

It was the intention of Mr. Justice Hyde to have printed his notes had he survived to reach England, but on his death in India they were taken charge of by Sir Robert Chambers who, had his health permitted, would have arranged and published the whole.

When Sir Charles Harcourt Chambers, the nephew of Sir Robert, was appointed a Puisne Judge at Bombay, these books were given to him by Lady Chambers, and on his death they again came into her hands, and she delivered them, as stated, to Sir William Russell.

Mr. Smoult in preparing his collection of orders passed on the plea side of the Court from its establishment in 1774 to the year 1813, was permitted to use these MSS. and he has given copious extracts from them in notes to that compilation published in 1834.

Mr. Morton has now in the press a collection of cases selected by permission from the same MSS. and they will form a most valuable and useful acquisition to the profession.

We are at liberty to state that a great portion of the notes to this edition has been seen by the Chief Justice, in the progress of the work through the press, and that many alterations and additions have been made in consequence of his suggestions, and we beg respectfully to avail ourselves of this opportunity of acknowledging the great and valuable assistance which he has rendered to us, and the labour and pains he has bestowed upon the whole compilation.

And in the same manner we have to offer our acknowledgments to Mr. Justice Grant for a copy of his charge to the Grand Jury, in the year 1836, in the Admiralty case which is given in the *Appendix*, and in which the Law of Piracy is so ably discussed by him, followed up by his letter to the Board of Control upon that case being submitted for the opinion of the Privy Council, and we have availed ourselves of the comments with which he obligingly favored us, to extend our notice of the provisions made by the early Charters for the administration of justice in India.

We also beg to return our sincere thanks to Mr. Justice Seton for his kind assistance in notes upon the Equity rules, and for other valuable suggestions.

In conclusion we would repeat our appeal to the profession addressed to them on issuing the first volume, that we rely upon their consideration to excuse the delay in completing the entire publication, the time that has been allotted to it having been such only as did not encroach upon official duties, and the work, as respects our labors, being a gratuitous offering on our part to the profession, who, we trust, will also extend their indulgence to the many errors of the press, and particularly to those of the Index. The delay, however, has been productive of some advantage, as it has enabled us to include the Statute confirming the rules, all the Acts of the Government of India affecting the administration of justice in the Supreme Court to this date, and the additional rules promulgated during the present year.

Calcutta, Sept. 30, 1840.

LISTS OF CHARTERS

REFERRED TO IN THE PREFACE.

A List *of the several* Charters or Letters Patent, *&c. granted to the several* East India Companies, *from the first establishment thereof, in* 1601, *printed in the Collection of* 1777.

A. D.	A. Regni	Die & Men.		Page.
1601	43 Elizabeth	31st Dec.	A Charter or Letters Patent of a special incorporation of merchants, by the name of "*The Governor and* "*Company of Merchants of London,* "*trading into the East-Indies,*" with divers privileges, to them and their successors, for 15 years from Christmas	3
1609	7 James I.	31st May.	A Charter of incorporation, to the said Governor and Company, with divers privileges, to them and their successors for ever . . .	27
1661	13 Charles II.	3d April.	A Charter to the said Company, of divers privileges, to them and their successors	54
1669	20 Charles II.	27th March.	A Charter to the said Company, of the Island and Port of *Bombay* to them and their successors with the Sovereignty thereof	80
1674	25 Charles II.	16th Dec.	A Charter to the said Company, of the Island of *St. Helena*, to them and their successors	96
1677	28 Charles II.	5th Oct.	A Charter to the said Company, of confirmation of their privileges .	108
1683	35 Charles II.	9th Aug.	A Charter to the said Company, rendering their Charter of the 3d of April, 13th of his Reign, more effectual and compleat	116
1686	2 James II.	12th April.	A Charter to the said Company, confirming their former Charters and privileges	125
1693	5 William & Mary	7th Oct.	A Charter to the said Company, restoring and confirming their privileges	141
1693	5 William & Mary	11th Nov.	A Charter prescribing orders and regulations for the said Company .	152
1694	6 William & Mary	28th Sept.	A Charter prescribing Orders and regulations for the said Company .	169
1698	10 William III.	13th April	A Charter declaring what number of votes each member of the said Company shall have, which is according to his or her proportion of stock	183

A. D.	A. Regni	Die & Men.		Page.
1698	10 William III.	5th Sept.	A Charter* of incorporation of merchants, by the name of "*The English Company trading to the East-Indies*"	188
1702	1 Anne	22d July,	A Charter of an Indenture tripartite, between the Queen of the first part: the old Company of the second part and the new Company of the third part, thereby granting the said Two Companies power to trade with a Joint Stock, and divers other privileges	243
1702	1 Anne	22d July,	A Charter of an Indenture quinquepartite, of convevance of the Possessions and dead Stock of the Two Companies	316
1708	7 Anne	29th Sept.	The Earl of Godolphin's Award, between the Old and New Companies	345
1709	8 Anne	22d April,	A Charter of Grant to *the English Company trading to the East-Indies*, of all Debts and Sums of Money, due to *the Governor and Company of Merchants of London, trading into the East-Indies* . .	359
1709	8 Anne	7th May,	A Charter of acceptance of a Surrender, made by *the Governor and Company of Merchants of London, trading into the East-Indies*, of their Charters, &c.	365
1726	13 George I.	24th Sept.	A Charter to "*The United Company of Merchants of England, trading to the East-Indies*" of incorporation of Mayor and Aldermen, at Madraspatnam, Bombay, and Calcutta, and establishing Courts of Justice, with divers privileges to the Company	368
1727	1 George II.	17th Nov.	A Charter granting to the United Company, all Fines, set upon any persons, by the Courts established by the said Charter	400
1753	26 George II.	8th Jan.	A Charter to the said United Company, of incorporation of Mayor and Aldermen, at Madraspatnam, Bombay, and Calcutta, and establishing Courts of Justice, with divers privileges to the Company .	406
1757	31 George II.	19th Sept.	A Grant to the said United Company, of Plunder and Booty .	457
1758	31 George II.	14th Jan.	A Grant to the said United Company, of Plunder and Booty .	460

* This Charter is the foundation of the privileges and immunities enjoyed by the present East India Company.

A List *of the several* Charters or Letters Patent, *&c. granted to the several* East India Companies, *from the first establishment thereof, in* 1601, *not printed in the Collection of* 1777.

A. D.	A. Regni	Die & Men.	
1604	1 James I.	23d Feb.	A Charter or Letters Patent of License to transport £12,000 of foreign Money.
1607	4 James I.	5th Jan.	Two Charters of License each to transport £20,000 of foreign Silver.
1608.	5 James I.	8th Feb.	
1610	7 James I.	22d May,	A Charter of License to sell to other merchants, spices ungarbled, in whole packs, to be by them transported.
1611	8 James I.	4th Dec.	A Charter of privilege, that neither the Company, nor their goods and merchandizes, shall be sued, arrested, or molested, in respect of their trading, &c.
1616	13 James I.	14th Dec.	A Charter of confirmation to the Company, for transporting foreign Silver.
1617	14 James I.	11th July,	A Charter to the Company, to sell spices ungarbled, in whole, with a pardon for former contempts concerning the same, and License to transport foreign Bullion.
1618	15 James I.	16th Jan.	A License for the Company to transport foreign Bullion.
1622	20 James I.	4th Feb.	A Charter of privilege for the Company to chastise and correct all English persons residing in the East-Indies, and committing any misdemeanor, either with Martial Law or otherwise.
1624	22 James I.	11th Oct.	A Charter of a pardon to the said Governor and Company, for certain Offences; and a Grant unto them of such sums of money, and other goods and merchandizes, as did belong to the King.
1626	2 Charles I.	28th March,	A License for the Company, to transport £30,000 in foreign Gold.
1626	2 Charles I.	17th Aug.	A Charter to the Company, empowering them to erect Mills for making into Gun-powder all such Saltpetre as they shall import.
1626	2 Charles I.	13th Feb.	Charters of License for the Company to transport various sums in foreign or English Gold.
1626	2 Charles I.	22d March,	
1627	3 Charles I	18th Feb.	
1628	4 Charles I.	24th March,	

A. D.	A. Regni	Die & Men.	
1629	5 Charles I.	10th March,	Charters of License for the Company to transport various sums in foreign or English Gold.
1629	5 Charles I.	17th Oct.	
1630	6 Charles I.	9th Nov.	
1631	7 Charles I.	21st Nov.	
1631	7 Charles I.	3d March,	
1632	8 Charles I.	25th Sept.	
1633	9 Charles I.	8th Oct.	
1634	10 Charles I.	1st March,	
1634	10 Charles I.	12th March,	
1635	11 Charles I.	30th Nov.	
1638	14 Charles I.	21st March,	
1655	———	10th Aug.	A Charter of a Warrant to pay to the Company £50,000, lent by them for the Use of the Common Wealth.
1660	12 Charles II.	11th Jan.	A Charter of License for the Company to enter upon, take and possess the Island of Roone, and to regain the same from the Netherland East-India Company, and to plant, husband, manage, retain and keep the same.
1660	12 Charles II.	18th Dec.	A Charter for the Company to transport £60,000 in foreign Gold or Bullion.
1668	20 Charles II.	6th Feb.	A Charter of Discharge to the said Company, for selling two East-India Prizes, and for the monies raised thereby.
1673	24 Charles II.	7th Oct.	A Charter of Release to the Company, of several covenants theretofore made between them and the Commissioners of the Navy, touching some Ships sent to the East-Indies.
1673	24 Charles II.	7th Oct.	A Charter of a Grant to the Company, to receive several sums of money out of the Customs.
1674	25 Charles II.	27th Oct.	A Charter of confirmation to the Company, of Articles concerning the sale of four Dutch Prizes.
1674	26 Charles II.	13th March,	A Charter of a Discharge to the Company, for monies made by the sale of four Dutch Prizes.
1677	28 Charles II.	21st Oct.	A Charter of a Warrant to the Company to receive £40,000.

A. D.	A. Regni	Die & Mn.	
1677	29 Charles II.	24th Jan.	Two Charters to the Company, to receive £60,000 and £50,000 out of the Exchequer.
1678	30 Charles II.	22d Nov.	
1683	35 Charles II.	5th July,	A Charter to the Company for payment of £40,463-10s. for 1051 tons of Saltpetre, furnished for His Majesty's Use.
1683	35 Charles II.	1st Aug.	A Charter authorizing the Commissioners of the Admiralty to grant and give out Commissions to such as the Company should name and recommend, to aid and assist them, against the King of Bantam.
1683	35 Charles II.	14th Sept.	A Charter of a Warrant to the Commissioners of the Admiralty to assist the Company against the King of Bantam.
1684	1 James II.	———	A Charter of proclamation, restraining all His Majesty's Subjects but the Company, and their Agents, from trading to the East-Indies.
1689	1 William III.	3d Oct.	A Charter of a Warrant to pay to the Company, £22,500, for 500 tons of brown Saltpetre.
1693	5 William III.	26th Oct.	A Charter of Discharge for the Company, for the Tenth Part of Prizes taken by them, and due to His Majesty.
1698	10 William III.	14th July,	A Charter appointing Hugh Boscawen and others, to take subscriptions for a General Society, to have liberty and power to trade to the East-Indies.
1698	10 William III.	———	A Charter of a schedule, marked A, containing the draught of a Charter for the said General Society.
1698	10 William III.	———	A Charter of the schedule, marked B, containing the draught of a Charter for the aforesaid English Company.
1698	10 William III.	3d Sept.	A Charter of incorporation, empowering certain persons to trade to the East-Indies, by the name of the General Society, entitled to the advantages given by an Act of Parliament, for raising £20,00,000, for the Service of the Crown.
1706	4 Anne	———	A Charter of Release to *The Company of Merchants of London, trading into the East-Indies*, of all offences and crimes committed contrary to an Act of Parliament.
1710	8 Anne	15th Aug.	A Charter of Grant to Sir Jonathan Andrews, and others, of all Debts, &c. due to the aforesaid Company, before the Surrender of their Charters.

A. D.	A. Regni	Die & Mens	
1728	2 George II.	4th Nov.	A Charter empowering the Commissioners of the Admiralty, at the request of *The United Company*, to give ample powers to the Commanders of Ships, belonging to the Company, to take foreign Ships, trading from the Austrian Netherlands to the East-Indies, for six years, from the 20th of May last.

Charters or Letters Patent *establishing Courts of Justice, &c. in India.*

A. D.	A. Regni	Die & Mens	
1760	1 George III.	20th Dec.	A Charter for establishing Courts of Judicature, &c. at Fort Marlborough.
1761	1 George III.	27th Jan.	A Charter of Commission to the United Company, for the trying of Pirates, at Fort William.
1761	1 George III.	27th Jan.	A Charter of Commission to the United Company, for the trying of Pirates, at Fort St. George.
1761	1 George III.	27th Jan.	A Charter of Commission to the United Company, for the trying of Pirates, at Bombay.
1761	1 George III.	13th March,	A Charter of Commission to the United Company, for the trying of Pirates, at Fort Marlborough.
1774	14 George III.	26th March,	The Charter or Letters Patent establishing the Supreme Court of Judicature at Fort William.
1798	38 George III.	20th Feb.	Letters Patent establishing the Recorder's Court, at Fort St. George and Bombay.
1800	41 George III.	26th Dec.	Letters Patent establishing the Supreme Court at Fort St. George.
1807	47 George III.	25th March,	Letters Patent establishing the Court of Judicature of Prince of Wale's Island.
1823	4 George IV.	8th Dec.	Letters Patent establishing the Supreme Court at Bombay.
1826	7 George IV.	27th Nov.	Letters Patent establishing the Court of Judicature of Prince of Wale's Island, Singapore, and Malacca.
1837	7 William IV.	25th Feb.	Letters Patent granting Admiralty Jurisdiction to the last mentioned Court.

* See the Charters of Geo. I. of 1726 and Geo. II. of 1753 in the first List.

LIST

OF THE PRINCIPAL WORKS RELATING TO THE ADMINISTRATION OF JUSTICE IN INDIA

REFERRED TO IN THE PREFACE.

Parliamentary Reports and Papers on the affairs of India.

	Date of publication, &c.
Reports of the Committee of the House of Commons on the state of the East India Company. From 1772 to 1773 inclusive.	Re-printed by order of the House of Commons in 1803.
Reports of the Committee of secrecy of the House of Commons on the same subject. From 1772 to 1773, inclusive.	Re-printed by order of the H. of C. in 1804.
Reports of the Select Committee of the House of Commons on the Administration of Justice in India. From 1781 to 1782, inclusive.	Re-printed by order of the H. of C. in 1804.
Reports of the Select Committee of the House of Commons on the same subject, 1783.	Re-printed by order of the H. of C. in 1806.
Reports of the Select Committee of the House of Commons, and Appendixes. From 1808 to 1812, (including the Fifth Report of 1812, appendix and glossary.)	Printed by order of the H. of C. 1808 to 1812.
Selection of Papers from the Records of the India House, relating to Revenue, Police, and Civil and Criminal Justice in India. From 1820 to 1826.	Printed by order of the Court of Directors, 1820 and 1826.
Reports of the Select Committee of the House of Lords on the affairs of the East India Company, with evidence and Appendix, 1830.	Printed by order of the House of Commons and also printed by order of the Court of Directors, 1830.
Reports of the Select Committee of the House of Commons on the same subject, with evidence and Appendix, 1830.	Printed by order of the H. of C. and also printed by order of the C. of D., 1830.
Reports of the Select Committee of the House of Commons on the affairs of the East India Company, with evidence and Appendixes, 1831.	Printed by order of the H. of C. and also printed by order of the C. of D., 1831 and 1832.
Reports of the Select Committee of the House of Commons on the affairs of the East India Company, with evidence and Appendixes under the following heads—	Printed by order of the H. of C. 1832.

1. Public.
2. Finance, &c.
3. Revenue.
4. Judicial.
5. Military.
6. Political—1832.

Papers respecting the negotiation for the renewal of the Company's Charter, 1833.	Printed by order of the Court of Directors, 1833.

Hindoo Law.

	Vols.	*Edition.*	
Halhed's Gentoo Code,	1	London.	1777.
Institutes of Menu, by Sir W. Jones,	1	Calcutta. and third vol. of works.	1794.
Colebrooke's Digest,	3	Calcutta, re-printed London.	1801.
Colebrooke's Law of Inheritance, Dáya Bhágá and Metacshara,	1	Calcutta.	1810.
Wynch's Law of Adoption, Dáya Cramá—Sangraha.	1	Calcutta.	1818.
Sir Francis Workman Macnaghten's considerations on Hindoo Law,	1	Serampore.	1824.
Sir Thomas Strange's Elements of Hindoo Law,	1 and in 2	London.	1825.
		London.	1830.
W. H. Macnaghten's Principles of Hindoo Law,	2	Calcutta.	1829.
J. C. C. Sutherland's Law of adoption—Dattaká Mimánsá and Dattaká Chandriká,	1	Calcutta.	1821. and 1834.

Mahomedan Law.

Hamilton's Hedáya,	4	London.	1791.
Mahomedan Law of Succession by Sir William Jones—Surráza,	3rd. vol. of his works.		
W. H. Macnaghten's principles of Mahomedan Law,	1	Calcutta.	1825.
N. B. E. Baillie's Mahomedan Law of Inheritance,	1	Calcutta.	1832.

Reports.

Sudder Dewanny Adawlut, Bengal. From 1791 to 1829.	3	Calcutta.	1827.
	1	Ditto.	1835.
Nizamut Adawlut Bengal. From 1805 to 1827,	2	Calcutta.	1827.
	3rd. volume 1st part,		1827.
Notes of Cases at Madras by Sir Thomas Strange,	3	Madras.	1816.

Miscellaneous.

	Vols.	Edition.	
Regulations of the Governments of Bengal, Fort St. George, and Bombay, from 1780 to 1834.		Printed by order of the H. of C. and also by order of the Court of Directors, 1818 to 1838.	
Acts of the Government of India. From 1834.		Printed at Calcutta.	
Harington's Analysis of the Laws and Regulations of Bengal, ...	1	London. .	1821.
Preface to ditto, ...		Asiat. Res. vol. x. p. 475.	
Index to the Regulations by Dale, ...	1	Calcutta. . .	1800.
Police Regulations of Calcutta 1802 to 1829.		Calcutta.	
Bolts on Indian affairs.	2	London. . .	1772.
Verelst's view of the English Government in Bengal.	1	London. . .	1772.

THE OPENING OF THE SUPREME COURT.

AT A

Supreme Court of Judicature,

HELD AT THE TOWN HALL OF CALCUTTA,

At Fort William in Bengal, on Saturday, the 22d day of October, in the year of our Lord

1774.

PRESENT.

The Hon. Sir Elijah Impey, Knight,..... *Chief Justice.*

The Hon. Robert Chambers, Esq. .....
The Hon. Stephen Cæsar Lemaistre, Esq. .....
The Hon. John Hyde, Esq. ..... } *Puisne Justices.*

The Hon. Sir Elijah Impey and the other Judges take and subscribe the oaths of office and allegiance. The following entry appears on the rolls, signed by the three Puisne Justices.

"The said Sir Elijah Impey Knight, Chief Justice of the Supreme Court "of Judicature at Fort William in Bengal, appointed by letters patent of "Our Sovereign Lord the King, under his great seal of Great Britain, "dated at Westminster, the twenty-sixth day of March, in the fourteenth "year of his Reign, and Robert Chambers, Stephen Cæsar Lemaistre, "and John Hyde, Esquires, Justices of the same Court, appointed by the "said letters patent, being here assembled, according to the direction of "the said letters patent. We the said Robert Chambers, Stephen Cæsar "Lemaistre and John Hyde, have now administered to the said Sir Elijah "Impey, the several oaths and the declaration above written, and the said "Sir Elijah Impey in the presence of us, so assembled, hath here taken, "made and subscribed the said oaths and declaration respectively. In "witness whereof we hereunto put our hands and do hereby record the "same."

THE COURT appointed William Magee and Richardson McVeah, Esqrs. Masters of the Court of Equity, who thereupon severally took the oaths of office and allegiance.

The Court appointed the said William Magee, keeper of the Records and Muniments, and he thereupon took the oath of Office.

The Court appointed the said Richardson McVeah, Accomptant General, and he thereupon took the oath of Office.

The Court admitted Thomas Farrer, Esq. an Advocate of this Court, who thereupon took the oath of Allegiance.

The Court appointed Charles Sealy, Register of the Court of Equity, who thereupon took the oaths of Office and Allegiance.

The Court appointed the said Charles Sealy, Register of the Ecclesiastical Court, and he thereupon took the oath of Office.

The Court appointed the said Charles Sealy, Register of the Court of Admiralty, and he thereupon took the oath of Office.

The Court appointed Thomas Bowker, Clerk of the Crown, who there upon took the oaths of Office and Allegiance.

The Court appointed Edmund Shrimpton. Prothonotary of the Court of Common Pleas, who thereupon took the oaths of Office and Allegiance.

The Court appointed John Mills, Examiner of the Court of Equity, who thereupon took the oaths of Office and Allegiance.

The Court appointed Richard Litchfield and North Naylor, Clerks of the papers, and Clerks of the depositions, and they severally thereupon took the oaths of Office and Allegiance.

The Court appointed William Inge and Charles Newman, sworn Clerks of the Court of Equity, and they severally thereupon took the oaths of Office and Allegiance.

The Court appointed James Pritchard, Sealer, who thereupon took the oaths of Office and Allegiance.

The Court appointed the said Thomas Bowker, William Inge, Charle, Newman, and James Pritchard, Attornies and Proctors, and they were severally sworn in accordingly.

The Court also appointed Ralph Uvedale, Thomas Morris, James Drivers Christian Frederick Brix, Stephen Bagshaw, and Robert Jarrott, Attornies and Proctors, and they accordingly severally took the oath of Allegiance, and were sworn in.

The Court ordered that a Mandamus should issue to Charles Sealy. late Register of the Mayor's Court, to deliver all the Records and Muniments of that Court into this Court.

The Court ordered that a Mandamus should issue to Stephen Bagshaw, late Clerk of the Courts of Oyer and Terminer and Gaol Delivery, to deliver all the Records and Muniments of the said Courts into this Court.

The Court adjourned to Monday the 7th day of November next, at eight of the clock in the forenoon.

JUDGES OF THE SUPREME COURT,

FROM ITS ESTABLISHMENT IN 1774.

Chief Justices.	*When sworn in.*	*Date of resignation or death.*
Sir Elijah Impey, *Knight* . .	Oct. 22, 1774	Resigned Nov. 24, 1783
Sir Robert Chambers, . .	Sept. 3, 1791	resigned Aug. 8, 1798
Sir John Anstruther, . . .	Aug. 8, 1798	resigned Feb. 22, 1806
Sir Henry Russell, . . .	July 12, 1806	resigned Nov. 9, 1813
Sir Edward Hyde East, . .	Nov. 9, 1813	resigned July 9, 1822
Sir Robert Henry Blossett, .	Dec. 23, 1822	died Feb. 1, 1823
Sir Christopher Puller, . .	April 15, 1824	died May 26, 1824
Sir Charles Edward Grey, .	June 29, 1825	resigned July 2, 1832
Sir William Oldnall Russell,.	July 4, 1832	died Jan. 22, 1833
Sir Edward Ryan, . . .	Dec. 2, 1833	
Puisne Justices.		
Sir Robert Chambers. . .	Oct. 22, 1774	appointed C. J. as above
Mr. Justice Lemaistre, . .	Oct. 22, 1774	died Oct. 31, 1787
Mr. Justice Hyde, . . .	Oct. 22, 1774	died July 8, 1796
Sir William Jones, . . .	Oct. 22, 1783	died Apr. 27, 1794
Sir William Dunkin . . .	Sept. 3, 1791	resigned Aug. 1, 1797
Sir James Watson, . . .	Mar. 1, 1796	died May 2, 1796
Sir John Royds, ...	Oct. 23, 1797	died Sept. 26, 1816
Sir Henry Russell, . . .	May 31, 1798	appointed C. J. as above
Sir William Burroughs, . .	Nov. 3, 1806	resigned Dec. 20, 1815
Sir Francis Macnaghten,. .	Mar. 1, 1816	resigned Mar. 2, 1825
Sir Antony Buller, . . .	Sept. 26, 1816	resigned Jan. 1, 1827
Sir John Franks, ...	Oct. 6, 1825	resigned Mar. 15, 1834
Sir Edward Ryan, . . .	May 21, 1827	appointed C. J. as above
Sir John Peter Grant,. . .	Oct. 17, 1833	
Sir Benjamin Heath Malkin,	Oct 6, 1835	died Oct. 21, 1837
Sir Henry Wilmot Seton,. .	Nov. 13, 1838	

BARRISTERS OF THE COURT,

FROM ITS ESTABLISHMENT IN 1774.

	Date of Admission.		
Thomas Farrer, Esquire..	October	22	1774
Christian Frederick Brix,	December	14	1774
Charles Newman,	December	14	1774
Hercules Durham,	January	7	1775
William Channey Lawrence,	November	3	1775
Charles Sealey,	March	21	1776
Mathew Hules Graves,	July	5	1776
Richard Tilghman.	February	11	1777
Robert Morse,	November	13	1777
George Nesbitt Thompson,	July	12	1779
Thomas Henry Davies,	March	1	1780
John Hare,	March	28	1780
Anthony Fay,	July	3	1780
Ralph Uvedale,	June	13	1782
Philip Yonge,	June	25	1782
William Dunkin,	October	22	1782
Solomon Hamilton,	October	22	1782
Jeremiah Church,	November	12	1782
Stephen Cassan,	November	12	1782
Phineas Hall,	June		1782
George Watson,	June	7	1783
Charles Johnson,	October	22	1783
Edward Herketh,	March	1	1784
James Dunkin,	March	1	1784
Henry Dogherty,	November	—	1784
Benjamin Sullivan,	October	25	1785
Hon'ble Lockhart Gordon,	March	4	1785
Robert Ledlie,	November	6	1785
Edward Maxwell,	March	1	1785
Charles Fuller Martyn,	November	2	1786
John Thomas Atkinson,	January	7	1787
William Simpson,	July	12	1787
John Royds,	March	28	1788
William Hart,	July	12	1788
Edward Strettell,	October	24	1788
John Shaw,	October	26	1789
William Burroughs.	November	10	1789
Sir John Richardson,	October	22	1790
Francis Macnaghten,	September	1	1791
Charles E. Carrington,	October	22	1792
Thomas Scott,	October	23	1792
Edward Benjamin Lewin,	November	17	1792
John Dickens,	February	17	1794

Lewis Kerr,	October	22	1796
Thomas Arthur Stroud,	June	20	1797
John Bateman,	January	31	1798
James Archibald Simpson,	May	10	1798
Alexander Stuart,	July	13	1798
Robert Percy Smith,	October	22	1803
Robert Cutlar Fergusson,	March	7	1807
Dempster Heming,	January	7	1811
Hon'ble Charles Francis Stewart,	January	7	1812
Herbert Compton,	June	15	1814
James Buller East,	January	7	1815
James Weir Hogg,	January	7	1815
Edmund Charles Macnaghten,	March	21	1816
Thomas Lewin,	October	22	1816
William Eaton,	January	13	1817
George Money,	October	22	1817
Robert Spankie.	January	30	1818
Richard Marnell,	June	15	1821
John Wheatley,	September	26	1822
Thomas E. M. Turton,	January	7	1823
John James Pemberton,	January	13	1823
Longueville Clarke,	January	15	1823
Robert O'Dowda,	March	1	1823
William Lennox Cleland,	March	13	1824
Roger Winter,	April	15	1824
John Pearson,	August	2	1824
Charles Robert Prinsep,	August	2	1824
Theodore Dickens,	October	22	1824
Edward Bird,	April	4	1825
James Minchin,	December	8	1825
Patrick O'Hanlon,	January	28	1826
John Cochrane,	July	12	1827
Charles Thackeray.	October	22	1827
Herbert Compton.	March	17	1828
George A. Young,	March	26	1828
Archibald Dobbs,	March	2	1829
Henry Holroyd	October	22	1830
John Peter Grant,	May	13	1831
John F. Leith,	November	9	1832
Frederick Osborne,	June	16	1834
Maurice F. G. Sandes,	July	12	1834
William Patrick Grant,	October	27	1834
Charles Augustus Nott,	March	1	1835
Edward D'Oyly Barwell,	October	26	1835
Herman Geffroy,	March	7	1836
Thomas Sydney Smyth,	October	24	1836
Charles W. Blunt,	November	14	1837
Thomas Charles Morton,	October	23	1837
George William Johnson,	February	12	1839
James Hume,	June	15	1839

OFFICERS OF THE COURT,

FROM ITS ESTABLISHMENT IN 1774.

MASTER AND ACCOUNTANT GENERAL.

William Magee and Richardson McVeagh,	October	22	1774
Edmund Shrimpton,	November	30	1774
Charles Stafford Playdell,	October	23	1775
William Chambers,	June	16	1779
John Hyde,	November	7	1785
Francis Macnaghten,	March	1	1792
Thomas Scott,	October	22	1793
Edward Morris,	April	16	1795
Levi Ball,	January	7	1797
Edward Lloyd,	December	1	1802
Robert Ledlie,	December	19	1805
Edward Benjamin Lewin,	November	30	1809
Hon. Charles Francis Stuart,	January	7	1814
Edmund Charles Macnaghten,	November	3	1817
Thomas Lewin,	January	24	1824
George Money,	October	26	1826
Theodore Dickens,	April	1	1835
Archibald Dobbs,	January	16	1837
William Patrick Grant	April	30	1838

EQUITY, ECCLESIASTICAL AND ADMIRALTY REGISTRAR.

Charles Sealy,	October	22	1774
William Jackson,	February	7	1777
William Blackstone,	August	28	1807
Dempster Heming,	October	22	1813
James Weir Hogg,	February	4	1822

Equity Registrar on separation of Offices.

Theodore Dickens,	February	15	1833

Ecclesiastical Registrar on separation of Offices

William Hunter Smoult,	February	15	1833

Offices again united upon arrangement with Government for the payment by salaries.

Theodore Dickens,	January	16	1837

KEEPER OF THE RECORDS.

William Magee,	October	22	1774
Richardson McVeagh,	November		1774

OFFICERS OF THE COURT.

William Chambers,	October	24	1785
John Hyde,	March	1	1792
Thomas Scott,	January	23	1794
Edmund Morris,	April	16	1795
Levi Ball,	January	7	1797
Thomas Scott,	August	31	1801
Edward Lloyd,	December	1	1802
Robert Ledlie,	December	19	1805
Edward Benjamin Lewin,	November	30	1809
Hon. C. F. Stuart,	January	7	1814
Edmund Charles Macnaghten,	November	3	1817
Thomas Lewin,	January	24	1824
George Money,	October	26	1826
Theodore Dickens,	April	1	1835
Richard Vaughan,	January	9	1837
William Hunter Smoult,	December	29	1838

CLERK OF THE CROWN.

Thomas Bowker,	October	22	1774
James Pritchard,	November	30	1774
Ralph Uvedale,	August	26	1777
William Johnson,	November	15	1777
James Archibald Simpson,	June	10	1813
Thomas Lewin,	May	1	1821
William Hunter Smoult,	January	24	1824
Henry Holroyd,	February	15	1833

PROTHONOTARY.

Edmund Shrimpton,	October	22	1774
Thomas Bowker,	November	30	1774
Edmund Shrimpton,	October	23	1775
Richard Litchfield,	February	22	1777
James Stark,	July	12	1783
William Chambers,	March	1	1792
John Hyde,	October	22	1793
Ralph Uvedale,	March	19	1799
James Archibald Simpson,	June	10	1813
Thomas Lewin,	May	1	1821
William Hunter Smoult,	January	24	1824
Theodore Dickens,	February	15	1833
Henry Holroyd,	January	8	1836

EXAMINER.

John Mills,	October	22	1774
Archibald Fraser,	December	12	1776
Edmund Morris,	July	12	1783
Francis Macnaghten,	April	16	1795
Ralph Uvedale,	December	12	1803
Anthony Mactier,	May	25	1813
James Archibald Simpson,	June	10	1813

Dempster Heming,	February	10	1819
Thomas Lewin,	May	1	1821
Elliot Macnaghten,	January	24	1824

N. B. In 1836, the Court, with reference to the practice in England, directed the Ecclesiastical and Admiralty Registrar to act as Examiner in all proceedings on his sides of the Court.

SWORN CLERK.

William Inge and Charles Newman,	October	22	1774
Samuel Tolfrey,	December	14	1774
William Johnson,	October	23	1775
Hugh Guyer Brag Honycomb,	November	15	1780
Phillip Brady,	April	25	1791
Nathaniel Penry Rees,	June	16	1794
Anthony Mactier,	October	25	1802
John Wheatly,	January	7	1825
Robert O'Dowda,	October	28	1830

CLERK OF THE PAPERS.

Richard Litchfield and North Naylor,	October	22	1774
James Durnford,	February	22	1777
Thomas Vowler Short,	March	9	1778
William Smoult,	November	2	1778
James Forbes,	January	7	1780
R. A. Pritchard,	October	31	1786
Philip Brady.	April	30	1787
Charles Rice,	October	27	1787
Nathaniel Penry Rees,	June	15	1793
Anthony Mactier,	October	25	1802
R. O. Dowda,	January	7	1825
John Franks,	February	7	1831

CLERK OF THE DEPOSITIONS.

Richard Litchfield and North Naylor,	October	22	1774
James Durnford,	February	22	1777
Thomas Vowler Short,	March	9	1778
William Smoult,	November	2	1778
James Forbes,	January	7	1780
R. A. Pritchard.	October	31	1786
Philip Brady,	April	30	1787
Charles Rice,	October	27	1787
Nathaniel Penry Rees,	June	15	1793
Anthony Mactier,	October	25	1802
R. O. Dowda,	January	7	1825
John Franks,	February	7	1831

OFFICERS OF THE COURT.

READING CLERK.

Philip Brady and Anthony Mactier,	March	1	1803
Robert O'Donda,	January	7	1825
John Franks,	February	7	1831

SEALER.

James Pritchard,	October	22	1774
Archibald Fraser,	November	30	1774
Matthew Newton,	March	22	1784
William Smoult,	October	9	1784
James Taylor,	December	20	1793
R. Uvedale,	July	12	1806
J. A. Simpson,	June	10	1813
James William Croft,	November	10	1813
Benjamin Comberback,	May	6	1815
Matthew Ryan,	February	7	1831
William Oldnall Russell,	July	4	1832
William Henry Oldnall,	October	22	1832
John Franks,	February	—	1833
E. B. Ryan,	December	—	1834

INTERPRETERS AND TRANSLATORS OF THE COURT.

William Chambers,	June	11	1776
William Coates Blaquiere,	October	22	1797
John Leclere,	June	15	1797
Thomas Muffin,	March	1	1811
Lewis Namey,	January	7	1814
W. D. S. Smith, second interpreter,	October	23	1815

SHERIFFS OF CALCUTTA.

Sheriffs.	*Deputies.*	
James MacRabey, Esquire	Samuel Tolfrey,	1775
Samuel Montague,	Samuel Tolfrey,	1776
William Wodsworth,	Harry Stark,	1777
Sir John Richardson,	Stephen Bagshaw,	1778
Sir John Hadley D'Oyly, Bart,	Harry Stark,	1779
Alexander Vanrixtell,	Harry Stark,	1780
Herbert Harris,	Thomas Boileau,	1781
John Hare,	Edward Brampton,	1782
Jeremiah Church,	Edward Brampton,	1783
Robert Morse,	William Hickey,	1784
Phillip Younge,	William Smoult,	1785
Stephen Cassan,	William Smoult,	1786
Edmund Morris,	William Smoult,	1787
William Lawson,	William Smoult,	1788
John Wilton,	William Smoult,	1789
William Orby Hunter,	William Smoult,	1790
Charles Fuller Martyn,	William Smoult,	1791

Anthony Lambert,	William Smoult,	1792
William Smoult,	William Smoult,	1793
James Dunkin,	John Stapleton,	1794
Levi Ball,	William Hickey,	1795
Ralph Uvedale,	James Taylor,	1796
Francis Macnaghten,	James Taylor,	1797
James Vanzant,	Donald Macnabb,	1798
Walter Ewer,	Edward Lloyd,	1799
James Brice,	Edward Lloyd,	1800
Edward Thornton,	William Hickey,	1801
Henry Stone,	Edward Lloyd,	1802
Edward Benjamin Lewin,	William Hickey,	1803
Richard Fleming,	James Taylor,	1804
Stephen Laprimaudaye,	William Hickey,	1805
Henry Churchill,	William Hickey,	1806
James Archibald Simpson,	James Taylor	1807
William Fairlie,	William Hickey,	1808
James Archibald Simpson,	Charles Whalley,	1809
Patrick Moir, / Robert Cutlar Fergusson,	Charles Whalley,	1810
Josias Dupre Alexander,	James Taylor,	1811
John Brereton Birch,	Robert Mosely Thomas,	1812
George Saunders,	William Scott,	1813
John Hutchison Fergusson,	James Taylor,	1814
Charles D'Oyly,	Robert M. Thomas,	1815
John Williamson Fulton,	Benjamin Comberbach,	1816
Edmund Charles Macnaghten,	Benjamin Turner,	1817
George Templer,	Charles George Strettell,	1818
Patrick Maitland,	William Augustus Brewer,	1819
Herbert Compton,	William Hunter Smoult,	1820
George Warde,	C. G. Strettell,	1821
James Calder,	William Henry Abbott,	1822
William Hay Macnaghten,	W. H. Smoult,	1823
Robert McClintock,	C. G. Strettell,	1824
William Hay Macnaghten,	W. H. Smoult,	1825
William Prinsep,	Benjamin Waddington,	1826
Trevor J. C. Plowden,	C. G. Strettell,	1827
Browne Roberts,	Charles Hogg,	1828
James Calder,	George Collier,	1829
Thomas Bracken,	Richard Vaugham,	1830
Nathaniel Alexander,	Popkin Homfray,	1831
William Melville,	Richard Bird,	1832
George Money,	John Henry Swinhoe,	1833
John Higginson,	Thomas Sandes,	1834
William Hickey	Richard Bird,	1835
Richard Howe Cockerell,	J. H. Swinhoe,	1836
Thomas Holroyd	Richard Bird,	1837
James Young,	Richard Bird,	1838
James Young,	Richard Bird,	1839

Officers of the Court *with their* salaries *as proposed by the Court, and approved of by the Supreme Council in* 1774, *besides the Fees of the respective Offices, as established by the Table of Fees.*

	A. R. per An.
Two Masters, each,	8000
Principal Interpreter and Persian Translator,	8000
Keeper of the Records and Muniments,	2000
Accountant General,	2000
Sealer,	2000
Two Reading Clerks, each,	2000
Two Assistant Interpreters, for Portuguese, Persian and Moors, each,	1000
Cryer,	1000
Court Keeper,	400
Secretary and Clerk to the Chief Justice,	3000
Interpreter to the Chief Justice,	1000
Tip-staff to the Chief Justice,	1000
Clerk to the first Puisne Judge,	3000
Interpreter to ditto,	1000
Tip-staff to ditto,	1000
Clerk to the second Puisne Judge,	3000
Interpreter to ditto,	1000
Tip-staff to ditto,	1000
Clerk to the third Puisne Judge,	3000
Interpreter to ditto,	1000
Tip-staff to ditto,	1000
Banyan,	600
A Cash-keeper,	360
A Writer,	240
A Bramin,	360
A Mullah,	360
A Persian Munshee,	360
A Nagree Writer,	240

	Per Mensem.
A Nazir of Peons,	—
Fifty Peons, each,	4
Twenty Chubdars, each,	6
Two Durwans, each,	6
One Matrany,	4

Crown Side.

	Per Annum.
Clerk of the Crown,	6000
Clerk of the Indictments,	3000

Common Plea Side.

	R. per An.
Prothonotary,	6000
Two Clerks of the Papers and of the Depositions, each	2000

Equity Side.

Register,	6000
Two Sworn Clerks, (no salary)	——
Examiner,	4000
Interpreter to the Examiner,	360

Ecclesiastical Side.

Register,	2000
Examiner,	1000
Apparitor,	150

Admiralty Side.

Register,	2000
Examiner,	1000
Apparitor,	150

The following were proposed by the Judges and approved of by the Supreme Council, the 3d Feb. 1777.

	A. R. per Mensem.
An Examiner and Reporter of Petitions,	400
An Advocate for Pauper suitors,	600
An Attorney for Pauper suitors,	400
Two learned Molavies, each,	200
Two learned Pundits, each,	200
A Clerk to attend the Grand Jury at every session of Oyer and Terminer,	53
An Interpreter to attend the Grand Jury and Clerk of Indictments at every session of Oyer and Terminer,	35
Additional salary to the Assistant Interpreters, each,	100

N B. Also six Constables, viz.

One Head Constable,	70
Five Constables, each,	60

Officers of the Court, *as proposed by the Judges, in their letter of the 25th April, 1836, and approved of by the Government, as the establishment under the new arrangement for the remuneration by salaries instead of fees.*

---

1. Master in Equity, Accountant General, Examiner in Equity, and Examiner of the Insolvent Court.
2. Registrar in Equity, Ecclesiastical, and Admiralty, and Sworn Clerk.
3. Prothonotary, Clerk of the Crown, Clerk of the Papers, Reading Clerk and Sealer.
4. Taxing Officer, Receiver, Record Keeper, and Chief Clerk of the Insolvent Court.
5. Three Judge's Clerks.
6. Chief Interpreter and Translator of Native Languages.
7. Second Interpreter.
8. Clerk to the Grand Jury.
9. Two Interpreters to the Judges.
10. Interpreter of the Portuguese Language.
11. Two Muolovees, or Interpreters of Mahomedan Law.
12. Two Pundits, of Hindoo Law.
13. Crier, Apparitor and Keeper of the Court.

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CHARTER

ESTABLISHING

The Supreme Court of Judicature

FORT WILLIAM IN BENGAL.

Dated 26th March, 1774.

GEORGE THE THIRD, by the Grace of God, of Great Britain, France, and Ireland, King, Defender of the Faith, and so forth. To all to whom these presents shall come, greeting. " Whereas *by an Act of Parliament, passed* " *in the thirteenth year of our reign,* reciting a *Char-* " *ter, bearing date at Westminster, the eighth day of* " *January, in the* twenty-sixth *year of the reign of our* " *Royal Grandfather,* King George the Second, of glori- " ous memory, by him granted to the United Company of " Merchants of England, trading to the East Indies; there- " by, amongst other things, constituting and establishing " courts of civil, criminal, and ecclesiastical jurisdiction, " at the said United Company's settlements of Madras- " patnam, Bombay, and Fort William in Bengal; and that " the said charter does not sufficiently provide for the due

Recites 13 Geo. III. c. 63.

NOTE.—Sir Elijah Impey, in his speech at the Bar of the House of Commons, 4th February, 1788, stated as follows:—" I shall submit to the House " the following facts and observations:—The original draft of this Charter was " perused by the present Lord Chancellor, Lord Thurlow, then Attorney " General;—received alterations from Lord Loughborough, then Solicitor General;—was revised by Lord Walsingham, then Chief Justice of the Common Pleas,* and by Earl Bathurst, then Lord Chancellor;—that I attended all the noble Lords on the occasion, more particularly the present " Lord Chancellor, and had the advantage of hearing their several reasonings " on the subject;—that I have at present, in my possession, all their rough " drafts, with their several observations, and the reports of the then Attorney " and Solicitor General, in their own respective hand-writing;—that from them " I did acquire, and have declared, that I did acquire, a more distinct knowledge " of the intention of the drawers of the charter, is most undoubtedly true."—*Hans. Parl. Hist. Vol.* 26 *p.* 1354.

* Chief Justice De Grey, resigned in February 1779, and was created Lord Walsingham the October following.

" administration of justice, in such manner as the state and
" condition of the Company's Presidency of Fort William
" in Bengal, so long as the said Company shall remain in
" the possession of the territorial acquisitions therein before
" mentioned, do and must require; it is, among other things,
§ 13. " enacted, that it shall and may be lawful for us, by Charter
" or letters patent, under the great seal of Great Britain, to
" erect and establish a Supreme Court of Judicature, at Fort
" William in Bengal aforesaid, to consist of a Chief Justice
" and three other Judges, being barristers of England or
" Ireland, of not less than five years' standing, with power
" to exercise and perform all civil, criminal, admiralty, and
" ecclesiastical jurisdiction, and to appoint such clerks,
" and other ministerial officers of the Supreme Court of
" Judicature, at Fort William in Bengal, with such reason-
" able salaries as shall be approved of by the Governor and
" Council, therein for that purpose mentioned: and it was
" therein further enacted, that so much of the said charter
§ 19. " granted by his said late Majesty, our Royal Grandfather,
" as respects or relates to the establishment of the Mayor's
" Court at Calcutta aforesaid, in Bengal, or to the civil,
" criminal, or ecclesiastical jurisdiction thereof, in the
" said United Company's settlement there, or the subordi-
" nates thereto belonging, in case a new charter shall be
" granted by us, in pursuance of this act, and shall be open-
" ly published at Fort William aforesaid, from and imme-
" diately after such publication, shall cease, determine, and
" be utterly void, to all intents and purposes: and it was
§ 21. " further enacted, that during such time as the said terri-
" torial acquisitions shall remain in the possession of the
" said Company, the Court of Directors of the said Unit-
" ed Company shall, and they are hereby required to,
" direct and cause to be paid, certain and established
" salaries (1) to the said Chief Justice, and each of the
" Judges of such Supreme Court of Judicature, at Fort
" William in Bengal, as shall be by the said new charter

(1) By the 13 Geo. III c. 63 § 21, the salary of the Chief Justice is fixed at £8,000, and of the other Judges at £6,000 per annum. The 37 Geo. III. c. 142 § 1, limits the number to a Chief Justice and two Puisne Judges. The 6 Geo. IV, c. 85, regulates the payment of their salaries and pensions.—[C.]

"established, that is to say, to the Chief Justice eight "thousand pounds by the year, and to each of the "Judges of the said Supreme Court of Judicature, at "Fort William in Bengal, six thousand pounds by the "year, and that such salaries shall be paid and payable, "to each and every of them respectively, for the time "being, out of the said territorial acquisitions in the king-"doms of Bengal, Behar and Orissa, such salaries to take "place and commence, in respect of all such persons who "shall be resident in Great Britain at the time of their "appointment, from the day on which such persons shall "embark from Great Britain; and such salaries to be in "lieu of all fees of office, perquisites, emoluments, and "advantages whatsoever, as by the said act may more "plainly and largely appear." § 22.

II. Now know ye, that we, upon full consideration of the premises, and of our especial grace, certain knowledge, and mere motion, have thought fit to grant, direct, ordain, and appoint, and by these presents we do accordingly, for us, our heirs and successors, grant, direct, ordain, and appoint, that there shall be, within the factory of Fort William at Calcutta, in Bengal, a Court of Record, which shall be called the Supreme Court of Judicature, at Fort William in Bengal; and we do hereby create, direct, and constitute the said Supreme Court of Judicature, at Fort William in Bengal, to be a Court of Record.

Establishes a Court of Record, to be called the Supreme Court of Judicature, at Fort William in Bengal.

III. And we do further will, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall consist of, and be holden by and before one Principal Judge, who shall be, and be called, the Chief Justice of the Supreme Court of Judicature, at Fort William in Bengal, and three other Judges, who shall be, and be called, the Puisne Justices of the Supreme Court of Judicature, at Fort William in Bengal; which said Chief Justice and Puisne Justices, shall be Barristers in England or Ireland, of not less than five years' standing, to be named and appointed, from time to time, by us, our heirs and successors, by letters patent, under our and their great seal of Great Britain; and they shall, all and every of them, hold their said offices, severally and respectively,

To consist of a Chief Justice and three Puisne Justices.

Their qualification.

To be appointed by the King under the Great Seal.

To act during pleasure.

during the pleasure of us, our heirs and successors, and not otherwise.

To be Justices of the Peace and Coroners, in Bengal, Behar, and Orissa.

And to have such authority as the Justices of the King's Bench in England.

IV. And it is our further will and pleasure, that the said Chief Justice, and the said Puisne Justices, shall severally and respectively be, and they are all and every of them, hereby appointed to be Justices and Conservators of the Peace and Coroners, within and throughout the said provinces, districts, and countries of Bengal, Behar, and Orissa, and every part thereof; and to have such jurisdiction and authority, as our Justices of our Court of King's Bench have, and may lawfully exercise within that part of Great Britain called England, by the common law thereof; and we further will and ordain, that all judgments, rules, orders, and acts of authority, or power whatsoever, to be made or done by the said Supreme Court of Judicature, at Fort William in Bengal, shall be made or done, by and with the concurrence of the said four Judges, or so many, or such one of them, as shall be on such occasions, respectively assembled or sitting as a Court, or of the major part of them so assembled and sitting: provided always, that in case they shall be equally divided, the Chief Justice, or, in his absence, the senior Judge present, shall have a double or casting voice.

The four, or the majority, to concur.

Chief or senior to have a casting voice.

Court to have a seal to be kept by the Chief Justice, or by the senior Puisne Judge.

V. And we do further grant, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall have and use, as occasion may require, a seal, bearing a device and impression of our royal arms, within an exergue or label surrounding the same, with this inscription, *The Seal of the Supreme Court;* and we do hereby grant, ordain, and appoint, that the said seal shall be delivered to, and kept in the custody of, the said Chief Justice, and in case of vacancy of the office of Chief Justice, the same shall be delivered over, and kept in the custody of such person, who shall then be senior Puisne Judge during such vacancy; and we do hereby grant, ordain, and appoint, that whensover it shall happen, that the office of Chief Justice, or of the Judge to whom the custody of the said seal be committed, shall be vacant, the said Supreme Court of Judicature, at Fort William in Bengal, shall be, and is hereby authorized and empowered, to

When Court may demand and seize the seal.

demand, seize, and take the said seal, from any person or persons whomsoever, by what ways and means soever the same may have come to his, her, or their possession.

VI. And we do further grant, ordain, and appoint, that all writs, summonses, precepts, rules, orders, and other mandatory process, to be used, issued, or awarded by the said Supreme Court of Judicature, at Fort William in Bengal, shall run, and be in the name and style of us, or of our heirs and successors, and shall be sealed with the seal of the said Supreme Courtof Judicature, at Fort William in Bengal, and shall have and bear the attestation of the Chief Justice, or, in the vacancy of the said office, of the senior of the three Puisne Justices, and shall be signed by the proper officer, whose duty it shall be, according to the arrangement hereinafter provided, to prepare and make out such process.

All writs, &c, issued by the Court, to be in the King's name, and attested by the Chief Justice, &c.

VII. And we do further grant, ordain, appoint, and declare, that the said Chief Justice, and the said Puisne Justices, shall and may, and so long as they hold the said offices respectively, shall be entitled to have and receive respectively, the salaries in and by the said recited act of Parliament provided for that purpose; that is to say, the Chief Justice eight thousand pounds by the year, and the three Puisne Justices six thousand pounds by the year, each of them to be paid and payable in manner and form as is therein specified and directed; and we do hereby give and grant to our said Chief Justice, rank and precedence above and before all our subjects whomsoever, within the provinces of Bengal, Behar, and Orissa, excepting the Governor-General for the time being, of the presidency of Fort William in Bengal, and excepting all such persons as by law and usage take place in England before our Chief Justice of our Court of King's Bench; and we do hereby also give and grant to each of our said Puisne Justices respectively, according to their respective priority of nomination, rank and precedence, above and before all our subjects whomsoever, within the said provinces of Bengal, Behar, and Orissa, excepting the said Governor-General, our said Chief Justice of our said Supreme Court of Judicature, at Fort William in Bengal, and all and every such member

Chief Justice to receive a salary of £8,000 and Puisne Justices £6,000 by the year.

Rank of Chief Justice and Puisne Justices

or members of the Supreme Council there, as shall respectively, by priority of nomination, be senior or seniors to such respective Puisne Justice or Justices, and also excepting all such persons as, by law and usage take place in England before our Justices of the Court of King's Bench.

Elijah Impey, Esq., to be the first Chief Justice: Robert Chambers, Stephen Cæsar Le Maistre, and John Hyde, Esqrs, the first Puisne Justices.

VIII. And we do hereby constitute and appoint Elijah Impey, of Lincoln's Inn, Esq., first Chief Justice; Robert Chambers, of the Middle Temple, Stephen Cæsar Le Maistre, of the Inner Temple, John Hyde, of Lincoln's Inn, Esqrs., to be the first Puisne Justices of our said Supreme Court of Judicature at Fort William in Bengal; the said Elijah Impey, Robert Chambers, Stephen Cæsar Le Maistre, and John Hyde, and every of them, being Barristers in England of five years' standing, and upwards.

Sheriff at Fort William to continue such, until appointment of another.

IX. And we do further, for us, our heirs and successors, grant, ordain, and appoint, that the person who shall be the Sheriff at Fort William in Bengal, at the time of the publication of this our charter, in manner hereinafter directed, shall be and continue the Sheriff, until another shall be duly appointed and sworn in to the said office; and

Mode of such appointment, in future.

we do further, for us, our heirs and successors, grant, direct, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall, upon the first Tuesday of December, in every year, nominate three persons, resident in the town of Calcutta, or the precincts thereof, to the Governor-General and Council, or the major part of them, who within three days after such nomination, shall appoint one of the said three persons to serve the office of Sheriff, for the year ensuing, to be computed from the twentieth day of December next after such appointment; which Sheriff shall, as soon as conveniently may be, and before he shall enter upon his said office, take an oath, faithfully to execute his office, and the

Sheriff to take oath of office before Governor-General in Council, &c.

oath of allegiance before the Governor-General, or in his absence, the senior member of the council there present, who are hereby respectfully authorized to administer the same; and shall continue in such office during the space of one whole year, to be computed from the said twentieth

To continue for one year.

day of December, and until another shall be duly appointed and sworn into the said office; and in case such Sheriff

shall die in his office, or depart from the provinces of Bengal, Behar, and Orissa, then another person shall and may, as soon as conveniently may be, after the death or departure of such Sheriff, be, in like manner, nominated, appointed, and sworn in as aforesaid, and shall continue in his office for the remainder of the year, or until another Sheriff shall be duly appointed and sworn into the said office; and we do further order, direct, and appoint, that the said Sheriff and his successors, shall, by themselves or their sufficient deputies, to be by them appointed and duly authorized, under their respective hands and seals, and for whom he and they shall be responsible, during his or their continuance in such office, and he and they are hereby authorized to execute all the writs, summonses, rules, orders, warrants, commands, and processes of the said Supreme Court of Judicature, at Fort William in Bengal, and make return of the same, together with the execution thereof, to the said Supreme Court of Judicature, at Fort William in Bengal, and to receive and detain in prison such persons as shall be committed to him for that purpose, by the said Supreme Court of Judicature, at Fort William in Bengal, and by the Chief Justice and Justices respectively; and we further direct, ordain, and appoint, that whenever the said Supreme Court of Judicature, at Fort William in Bengal, shall direct or award any process against the said Sheriff, or award any process, in any cause, matter, or thing, wherein the said Sheriff, on account of his being related to the parties, or any of them, or by reason of any good cause of challenge, which would be allowed against any Sheriff, in that part of Great Britain called England, cannot by law execute the same, in every such case, the said Supreme Court of Judicature, at Fort William in Bengal, shall name and appoint some other fit person to execute and return the same; and the said process shall be directed to the said person so named for that purpose, and the cause of such special proceeding, shall be suggested and entered on the records of the same.

Provision in case of death, &c. while in office.

Sheriff to execute duties by himself or deputy.

Mode of proceeding when the Sheriff shall be a party, &c.

X. And we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, from time to time, as occasion may require, to appoint so many and such clerks, and other ministerial officers, as

Court to appoint clerks and officers, with such reasonable salaries as

Court shall appoint, and Governor General and Council approve.

shall be found necessary for the administration of justice, and the due execution of all the powers and authorities which are, and shall be, granted and committed to the said Supreme Court of Judicature, at Fort William in Bengal, by these our letters patent; and it is our further will and pleasure, and we do hereby, for us, our heirs and successors, give, grant, direct, and appoint, that all and every the officers and clerks, to be appointed as aforesaid, shall have and receive respectively; such reasonable salaries, as the said Supreme Court of Judicature, at Fort William in Bengal, shall appoint, for each office and place respectively, and as the Governor General, and Council, appointed, constituted, and created by the act of Parliament hereinbefore mentioned, shall approve of: provided always, and it is our will and pleasure, that all and every the officers and clerks to be appointed as aforesaid, shall be resident within the limits of the jurisdiction of the said Court, so long as they shall hold their respective offices.

Such officers to reside within the jurisdiction of the Court.

Court to approve and admit Advocates and Attornies at law, who are to plead and act for the suitors; removable on reasonable cause

XI. And we do hereby further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to approve, admit, and enrol such and so many Advocates and Attornies at Law, as to the said Supreme Court of Judicature at Fort William in Bengal, shall seem meet, who shall be Attornies of Record, and shall be, and are hereby authorized to appear and plead, and act for the suitors of the said Supreme Court of Judicature, at Fort William in Bengal; and the said Advocates and Attornies, on reasonable cause, to remove; and no other person or persons whatsoever, but such Advocates or Attornies, so admitted and enrolled, shall be allowed to appear and plead, or act in the said Supreme Court of Judicature, at Fort William in Bengal, for or on the behalf of such suitors, or any of them.

No other persons to be allowed to appear and plead, &c.

A table of fees, to be settled by the Court, and approved by the Governor-General and Council.

XII. And we do hereby further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to settle a table of the fees to be allowed to such Sheriff, and all other the officers, clerks, and Attornies aforesaid, for all and every part of the business to be done by them respectively; which fees, when approved by the said Governor and Council, to whom we hereby give au-

thority to review the same, the said Sheriff and other officers, clerks, and attorneys, shall and may lawfully demand and receive; and we do further authorize the said Supreme Court of Judicature, at Fort William in Bengal, with the like concurrence of the said Governor and Council, from time to time, to vary the said table of fees, as there shall be occasion; and it is our farther will and pleasure, and we do hereby require and enjoin the Chief Justice, and the said Puisne Justices, and each of them respectively, within one year after these our letters patent shall have been published at Fort William in Bengal, aforesaid, and within one month from the said settling and allowance of the said table of fees, to certify, under their several hands and seals, and to transmit to us, our heirs and successors, a full and true account of the several offices and places, and officers and clerks, and of their salaries, severally and respectively, and a true copy of the said table of fees, together with the approbation of the said Governor and Council, and also any variation of the said table, to be made as aforesaid, within one month after the same shall have been so varied; and we further direct, ordain, and appoint, that the said table, and the said alteration and variations thereof, if any alteration or variation shall be made, shall be hung up in some conspicuous part of the hall or place where the said Supreme Court of Judicature, at Fort William in Bengal, shall be publicly holden.

Which they may also vary.

Court to transmit account of Offices, Officers and salaries and copy of table of fees, to His Majesty.

Table of fees to be hung up in Court.

XIII. And we do further direct, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, may and shall have power and jurisdiction, and is hereby authorized to hear, examine, try, and determine, in manner hereinafter mentioned, all actions and suits which shall or may arise, happen, be brought, or promoted, upon or concerning any trespasses or injuries, (1) of what nature or kind soever, or any debts, duties, demands, interests, or concerns, of what nature or kind soever, or any rights, titles, claims, or demands, of, in, or to, any houses, lands, or other things, real or personal, in the several

Court to have power and jurisdiction in all actions, arising in Bengal, Behar and Orissa.

(1) Distinction in the jurisdiction of the Court over natives, in actions for wrongs and in civil suits 21 Geo. III. c. 70. § 10.—[C.]

See form of statement of jurisdiction in such case, Smoult's collection of orders, 109.

And all pleas, real, personal or mixt, the causes of which arise against the Company, and the Mayor and Aldermen, and against any subject resident in Bengal, &c., or who shall have resided, or shall have debts, &c. there, and against executors and administrators of such subjects, and against any other person employed by or in the service of the Company, or Mayor and Aldermen, or any other subject. But not against any person never resident there, or then in Great Britain or Ireland. Unless action commenced within 2 years after cause arose, and exceeding 30,000 Rs. And jurisdiction in all such actions against

provinces or districts called Bengal, Behar, and Orissa, or touching the possession, or any interest or lien, in or upon the same; and all pleas, real, personal or mixt, the causes of which shall or may hereafter arise, accrue, and grow, or shall have heretofore arisen, accrued, and grown, against the said United Company of merchants trading to the East Indies, and against the *said* Mayor and Aldermen of Calcutta, at Fort William in Bengal, and against any other of our subjects, who shall be resident within the said provinces, districts, or countries, called Bengal, Behar, and Orissa, (1) or who shall have resided there, (2) or who shall have any debts, effects, or estate, real or personal, within the same; (3) and against the executors and administrators of such of our subjects, and against any other person, who shall, at the time of such action being brought, or at the time when any such action shall have accrued, be or have been, employed by, (4) or be or have been, directly or indirectly, in the service of the said United Company, or of the said Mayor and Aldermen, or of any other of our subjects: Provided always, that it shall not be competent to the said Supreme Court of Judicature, at Fort William in Bengal, to try or determine any suit or action against any person who shall never (5) have been resident in the provinces of Bengal, Behar, and Orissa, or any one of them, nor against any person then resident in Great Britain or Ireland, (6) unless such suit or action against such person so then resident in Great Britain or Ireland, shall be commenced within two years after the cause of action arose, and the sum to be recovered be not of greater value than thirty thousand rupees; and the said Supreme Court of Judicature at Fort William in Bengal, shall have the like power and jurisdiction, and is hereby authorized to hear, examine, try, and determine, all such causes, actions, and suits as aforesaid, arising, growing, and to be brought promoted against every other person or persons whatsoever, inhabitants of India, residing in the said provinces, districts, or countries of Bengal, Behar, and Orissa, upon,

(1) Benares and other places made subject to the jurisdiction, by 39 & 40 Geo. III. c. 79 § 20.—[*C.*]

(2) (3) (4) (5) and (6) See notes, Smoult's Collection of orders, 15, 98.

(4) See also 21 G. 3, c. 70. § 10.

any contract or agreement (1) in writing, entered into by any of the said inhabitants with any of His Majesty's subjects, where the cause of action shall exceed the sum of five hundred current rupees, and when such inhabitant shall have agreed in the said contract, that, in case of dispute, the matter shall be determined in the said Supreme Court of Judicature at Fort William in Bengal; and to the end that justice may be administered in the said Supreme Court of Judicature, at Fort William in Bengal, with all convenient speed and certain effect, our will and pleasure is, and we do hereby further grant, ordain, and appoint, that upon any such cause of action as aforesaid, it shall be lawful and competent for any person whatsoever, by himself or his lawful attorney, admitted and enrolled as aforesaid, to prefer to the said Supreme Court of Judicature, at Fort William in Bengal, and file of record in the said Supreme Court of Judicature at Fort William in Bengal, a plaint or bill in writing, containing the cause of action, or complaint, whereupon the said Supreme Court of Judicature, at Fort William in Bengal, shall, and is hereby authorized to award and issue a Summons, or precept in nature of a Summons, in writing, to be prepared in manner above-mentioned, directed to the said Sheriff, and containing a short notice of the cause of action set forth in the said plaint, and commanding the said Sheriff to summon (2) the person against whom the said plaint shall have been filed, to appear at some certain time and place, therein to be specified, to answer the said plaint, which said precept, and the execution thereof, the said Sheriff shall duly return to the said Supreme Court of Judicature, at Fort William in Bengal; and the person or persons so summoned, shall accordingly appear, and may plead such matter in abatement, bar, or other avoidance of the said plaint, or otherwise, as he or they shall be advised; and after such appearance, the Supreme Court of Judicature at Fort William in Bengal, shall proceed, from time to time, giving reasonable days (3) to the parties, to

all persons whatever, inhabitants of India, residing in Bengal, &c., upon any contract, in writing with a subject, where the cause shall exceed 500 current rupees, and when such inhabitant shall have agreed that the matter may be determined by the said Court.

Mode of proceeding in such actions.

Plaint.

Summons directed to Sheriff,

who shall return same.

Appearance and Plea.

(1) See notes, Smoult's collection of orders, 15, 98. See also 21 G. 3, c. 70. § 10. and § XVII. *post*, 22.

(2) See as to time, between teste and return of summons, and between proclamations, where defendants, British subjects, not then resident in India, Smoult's collection of orders, 110, 111.

(3) See proclamations, *post*, 16.

Cause to be heard and witnesses examined.

hear their respective allegations as justice may require, and examine the truth thereof, upon the oath or oaths of such competent and credible witnesses as they shall produce respectively; to which end we hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, at the request of either of the said parties, to award and issue a summons, (1) or precept in the nature of a summons, to be prepared in manner beforementioned, directed to every one of such witnesses, commanding him or her to appear, at a time and place to be specified in such summons, to depose his or her knowledge touching the suit so depending between the parties, naming them, and specifying at whose request such summons shall have issued; and upon the appearance of the said witnesses, or any of them, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby required to order and award to them, and each of them, such reasonable sum of money, for his, her or their expenses, as the said Supreme Court of Judicature, at Fort William in Bengal shall think fit, whether such witnesses shall be examined or not, the same to be paid forthwith, by the party at whose request the said summons shall have issued; and if the said sum of money so ordered and awarded, shall not be forthwith paid or secured to such witness, to the satisfaction of the Supreme Court of Judicature, at Fort William in Bengal, the party to whom it shall belong to pay the same, shall not only lose the benefit of such witness's testimony, but shall be compelled to pay him or her the money so ordered and awarded, by such ways and process, as are hereinafter provided, for levying and enforcing the payment and satisfaction of money recovered by judgments of the said Court; and the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered to administer to such witnesses and others, whom they may see occasion to examine, proper oaths and affirmations, that is to say, to such persons as profess the Christian religion, oaths upon the Holy Evangelists of God, and to Quakers, affirmations according to the form used in England for that purpose; and to others,

Subpœna to witnesses.

Court to order reasonable expenses to be paid them forthwith, by the party summoning.

Consequences of default,

and how payment thereof is to be enforced.

Witnesses to be sworn.

Quakers to affirm.

(1) See Smoult's collection of orders, 147, 148.

oaths in such manner and form as the Supreme Court of Judicature, at Fort William in Bengal, shall esteem most binding upon their consciences respectively; (1) and the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and required to reduce, or cause the said depositions to be reduced into writing, and subscribed by the several witnesses, with their name or other mark, and to file the same of record; and in case any person or persons so summoned, shall refuse, or wilfully neglect to appear and be sworn, or, being Quakers, to affirm, and be examined, and subscribe their depositions, as the Supreme Court of Judicature, at Fort William in Bengal, shall appoint, the Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered to punish such person or persons, so refusing or wilfully neglecting, as for a contempt, by fine, imprisonment, or other corporal punishment, not affecting life or limb.

Others, oaths most binding on their consciences.

Evidence to be reduced into writing, and signed.

Witnesses refusing to be sworn or affirm, to be punished as for a contempt.

XIV. And we do further give the said Supreme Court of Judicature, at Fort Willim in Bengal, full power and authority, upon examining and considering the several allegations of the said parties to such suit, or of the complainant alone, in case the defendant should make default after appearance, or say nothing, or confess the plaint, and the depositions of the witnesses produced, sworn, and examined, in manner above-mentioned, to give judgment and sentence, according to justice and right; and also to award and order such costs to be paid, by either or any of the parties to the other or others, as they, the said Court, shall think just. (2)

Court to give judgment, on hearing parties or complainant alone and depositions of witnesses, if defendant make default after appearance, or say nothing or confess plaint.

Costs to be awarded.

XV. And we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to award and issue a writ or writs of execution, to be prepared in manner before-mentioned, and directed to the said Sheriff for the time being, commanding him to seize and deliver the possession of houses, land, or other things, recovered in and by such judgment, or to levy any sum of money which shall be so recovered, or any costs which shall be so awarded, as the case may require, by

Execution to issue to seize and deliver possession of houses, land, &c. recovered, or to levy amount, or costs recovered, by

(1) See 9 G. 4. c. 74. § 36.

(2) See Smoult's collection of orders, title costs, 35, 160, and double costs, under Statutes, Ibid. 191, 268, 272.

seizing and selling houses, lands, debts &c. sufficient to satisfy judgment, or to issue, ca. sa.

Ca sa. and fi. fa. at same time.

Debts so seized, afterextended and returned to be paid as the Court shall appoint.

Such payment, and no other, to be effective discharge.

Court to make such interlocutory orders, as shall seem fit.

In failure of appearance on return of summons,

Capias of contempt may issue,

authorizing Sheriff to take bail for appearance.

seizing and selling so much of the houses, lands, debts, (1) or other effects, real and personal, of the party against whom such writs shall be awarded, as will be sufficient to answer and satisfy the said judgment or award, or to take and imprison the body of such party or parties, until he or they shall make such satisfaction, or to do both, (2) as the case shall require; and we do further order, direct, and appoint, that the several debts to be seized, as aforesaid, shall, from the time the same shall be extended and returned into the said Supreme Court of Judicature, at Fort William in Bengal, be paid and payable in such manner and form as the said Supreme Court of Judicature, at Fort William in Bengal, shall appoint, and no other; (3) and such payment, and no other, shall, from thenceforth, be an absolute and effective discharge for the said debts, and every of them respectively; and we do, hereby, further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to make such further and other interlocutory rules and orders, as the justice of the proceeding may seem to require; (4) and in case the party so summoned as aforesaid, (5) shall not appear upon the return of such summons or precept as aforesaid, according to the exigence thereof, we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to award and issue a writ or warrant, to be prepared in manner above-mentioned, and directed to the said Sheriff, commanding him to arrest and seize the body of such person so making default, and to have his said body, at such time and place as shall be specified in the said writ for that purpose, before the said Supreme Court of Judicature at Fort William in Bengal, to answer the said plaint; and the said Supreme Court of Judicature, at Fort William in Bengal, may, if it should be thought proper, by the said writ, authorize the said Sheriff to take such bail, for the appearance of the said defendant, as the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit to direct; (6) and upon such appearance

(1) and (3) See *post*, 17.

(2) See Plea Rule 12, title Process, *post*, v. 2.

(4) See Smoult's collection of orders, 234. 261.

(5) See *ante*, 11, and § XVI. *post*.

(6) See Smoult's collection of orders, 17, 110.

the said defendant may plead, in such manner as if he had appeared upon the return of the summons; and if the cause of action contained in such plaint shall be personal, and of more value than one hundred current rupees, and the plaintiff, by affidavit, or, being a Quaker, by affirmation in writing, to be filed of record, shall satisfy the said Supreme Court of Judicature, at Fort William in Bengal, that the defendant is justly and truly indebted to him in a greater sum than one hundred current rupees, or if he shall, by like affidavit or affirmation, to be filed as aforesaid, verify, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, a case of such enormous personal wrong, as in the judgment of the said Supreme Court of Judicature, at Fort William in Bengal, requires such security, the said Supreme Court of Judicature, at Fort William in Bengal, shall, and is hereby authorized and empowered to, award and issue, in lieu of the summons aforesaid, a writ or warrant, to be prepared in manner above mentioned, and directed to the said Sheriff, commanding him to arrest and seize the body of such defendant, and to have his said body, at a time and place, in the said writ to be specified, before the said Court, to answer the said plaint, and to give sufficient security, (1) to be approved of by the said Supreme Court of Judicature, at Fort William in Bengal, that he will stand to, and perform, the judgment of the said Supreme Court of Judicature, at Fort William in Bengal, upon the premises, and pay all such sum or sums of money, as shall thereby be awarded; and the said Supreme Court of Judicature, at Fort William in Bengal, may, in and by the said writ or warrant, authorize the said Sheriff, to deliver the body of such defendant so arrested, to sufficient bail, upon their sufficient recognizance and security given, that such defendant shall appear, at a time and place mentioned in such writ or warrant, and, in all things, perform and fulfil the exigence thereof; and upon the appearance of such defendant in and before the said Supreme Court of Judicature, at Fort William in Bengal, we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to commit him to prison, to the said

and thereupon defendant may plead, &c.

If cause of action be personal and exceed 100 current rupees,

or case of enormous personal wrong, verified by affidavit,

Capias may issue in lieu of summons, to arrest defendant.

Bail to the Sheriff.

(1) See Smoult's collection of orders, 17, 110, 111.

Bail to the Action.

Sheriff, unless or until he shall give security to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, to perform the judgment thereof, and pay all such sum or sums of money as shall be awarded thereby; which security we hereby empower the said Court to take, and thereupon to deliver the body of the said defendant upon bail. And if the said Sheriff shall return to either of the said writs, of *summons* or *capias*, that the defendant is not to be found within the jurisdiction of the said Supreme Court of Judicature at Fort William in Bengal, and the plaintiff shall, by affidavit, or being a Quaker, by affirmation in writing, or otherwise, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, make proof, verifying his demand, we do hereby grant, ordain, and appoint that the said Supreme Court of Judicature, at Fort William in Bengal, shall and may award and issue a writ of Sequestration, (1) to be prepared in manner above-mentioned, and directed to the said Sheriff, commanding him to seize and sequester the houses, lands, goods, effects, and debts of such defendant, to such value as the said Supreme Court of Judicature, at Fort William in Bengal, shall think reasonable and adequate to the said cause of action, so verified as aforesaid, and the same to detain till such defendant shall appear and abide such order of the said Supreme Court of Judicature, at Fort William in Bengal, as if he had appeared on the former process; and the said Supreme Court of Judicature, at Fort William in Bengal, shall and is hereby authorized and empowered, according to their discretion, either to cause the said goods to be detained in specie, or to be sold; and to give a day to such defendant, by Proclamation in open Court, from time to time, (2) not exceeding two years in the whole; and if such defendant shall not appear on the last day, which the said Court in their discretion shall think proper to give, it shall be lawful, and the said Supreme Court of Judicature at Fort William in Bengal, is hereby authorized, to proceed, *exparte*, (3) to hear, examine, and determine the said plaint and cause, and give such judgment therein, and award and order such costs as aforesaid; and if judgment

If Summons or Capias be returned non est inventus,

and demand verified,

Sequestration to issue to seize houses, lands, effects, and debts, &c.,

adequate to the cause of action so verified,

to abide order on appearance.

Proclamations for non-appearance.

Hearing exparte.

(1) See Smoult's collection of orders, title Sequestration, 17, 50, 234, &c.
(2) and (3) Ibid. 109, 112, 127, 190.

shall in such case pass for the plaintiff, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered to award and issue a writ to the said Sheriff, to be prepared in manner above-mentioned, commanding him to sell the said houses, lands, goods, effects and debts, so seized and sequestered, and to make satisfaction out of the produce thereof to the plaintiff, for the duty so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person, in whose possession the said effects were seized, or otherwise to reserve them for the said defendant, as occasion shall require; and if such effects shall not be sufficient to produce the sum so to be recovered, and the said costs, the said Supreme Court of Judicature, at Fort William in Bengal, is further empowered to award and issue such process of execution, for the deficiency, as is heretofore provided for levying money recovered by judgment and costs; and if judgment shall, in such last-mentioned case, pass for the defendant, the said Supreme Court of Judicature, at Fort William in Bengal, is authorized and empowered to award and order the costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, to be paid by the said plaintiff to the said defendant, or his attorney, or the person in whose possession the said effects were seized, and the same shall be levied by such process as is herein provided, for levying costs; and the said debts, from the time of their being so seized and extended and returned into Court, shall be payable, in such manner, as the said Supreme Court of Judicature, at Fort William in Bengal, shall direct, and no other. (1)

On judgment for Plaintiff.

Execution to issue to sell houses, lands, effects and debts so sequestered.

If judgment for Defendant.

Costs, expences of sequestration and damages, to be awarded to him

How to be levied.

Debts so sequestered, how payable.

XVI. "And whereas, in and by the *said charter*, made "and granted by our said Royal Grandfather, *King* "*George the Second*, on the *eighth day of January*, in the "*twenty-sixth* year of his reign, it is among other things "provided, that in case of actions or suits against the said "United Company, it should be lawful for the Court "thereby established, to issue their summons to the Go-"vernor, or President and Council, at Fort William in

Recital of Charter 26 G. 2 as to form of proceedings, either where the Company were plaintiffs or defendants.

(1) See *ante*, 14.

"Bengal, to appear for the said United Company, with "further power to issue such process against the said "Company and their estate and effects, as should be ne-"cessary to compel the appearance of the said Company, "and to raise and levy upon their goods, estate, or effects, "the debt or damages, together with such costs of suit as "should be awarded by the said Court, and that in case "of any action or suit to be brought by the said Compa-"ny against any other person, it should be lawful for the "said Governor, or President and Council, to appear and "act for the said Company; and in case of judgment "given against the said Company, and costs awarded, the "same should be levied by the said Court upon the goods "and effects of the said Company, as by the said charter "may more fully appear:" Now we, meaning also to extend the powers and authorities, hereby given and granted, for the due administration of justice in the most beneficial manner, to all our loving subjects, in the said provinces, districts, or countries of Bengal, Behar, and Orissa, do grant, ordain, and appoint, that the said Governor and Council, or their successors, shall and may, from time to time, by their sufficient warrant, to be filed on record, name and appoint some sufficient person, resident in the said town of Calcutta, to be the Attorney of the said United Company, who shall remain and act as Attorney to the said United Company, so long as he shall reside in Calcutta, or until some other fit person, there resident, shall be appointed in his place, in manner above-metioned; and if any such plaint as aforesaid, shall be filed in the said Supreme Court of Judicature at Fort William in Bengal, against the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to award and issue such summons or precept as aforesaid, directed to the said Sheriff, commanding him to summons the said United Company, by their said Attorney, to appear at a time and place therein to be specified, to answer the said plaint, and the said Sheriff shall serve the same upon the said Attorney, and the said Attorney, shall thereupon appear for the said Company; and if the said United Company shall not appear in manner aforesaid, upon the return of the said writ, the said Supreme Court of Judicature, at Fort William in

Governor and Council to appoint an Attorney, to act on behalf of the Company.

On plaint filed against the Company.

Summons to issue to be served on their Attorney.

If no appearance.

Bengal, may and is hereby authorized, upon such default, to award and issue a writ, to be prepared in manner before mentioned, and directed to the said Sheriff, commanding him to seize and sequester such, and so much of the estate and effects of the said Company, as upon the circumstances, the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit, to compel the appearance of the said Company, at the time and place which shall be specified for that purpose, in such writ of sequestration; and for default of appearance, upon the return of such last mentioned writ, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to issue other such writ or writs of sequestration, from time to time, till the said Company shall duly appear; (1) and after such appearance, the said Supreme Court, of Judicature, at Fort William in Bengal, shall and may proceed to hear, examine, try, and determine the said action and suit, in manner before mentioned; and if judgment shall be given in such action or suit against the said Company, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby empowered to award and order reasonable costs, to be paid by the said Company, and to cause the debt, or damages and costs, so awarded, to be raised and levied out of the estates, goods, and chattels of the said Company, in such manner as is hereinbefore provided, for execution to be had in other actions and suits; and if the said Governor and Council, shall refuse or neglect, at any time, to make such Attorney, the said Supreme Court of Judicature, at Fort William in Bengal, are hereby empowered and authorized, to name an Attorney for the said United Company, against whom process shall in like manner be awarded; And the said United Company, may also sue in the said Supreme Court of Judicature at Fort William in Bengal, in the same manner, and to the same effect, as other persons herein before mentioned, and if judgment should be given against the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, may order reasonable costs to be paid by them to the defendant, and to

Sequestration to issue.

And so from time to time, till appearance.

After appearance.

If judgment against Company,

debt, &c. to be levied, as in other actions.

And if Governor and Council refuse to appoint Attorney, the Court may appoint one.

Where the Company are plaintiffs.

If judgment against them, liable to costs.

(1) See *post*, 20, four Sequestration to issue.

be raised and levied out of their lands, houses, debts, estates, goods, and chattels, in such manner as is herein provided, for execution of judgments on other occasions; And if the said United Company, after four sequestrations, and after the expiration of two years from the service of the summons above mentioned, shall not appear, then the said Supreme Court of Judicature, at Fort William in Bengal, may and is hereby required, if the plaintiff shall, by affidavit, or, being a Quaker, by affirmation in writing, or otherwise, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, make proof, verifying his demand, to proceed, hear, examine, try and determine the said plaint and cause, and to give such judgment therein, and award such costs as aforesaid; and in case the said judgment shall pass for the plaintiff, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered to award and issue a writ to the said Sheriff, to be prepared in manner beforementioned, commanding him to sell the goods and effects, so seized and sequestered, and to make satisfaction out of the produce thereof to the plaintiff, for the duty so recovered, and his costs, and to return the overplus, if any there be, after satisfying the said judgment and costs, and the expenses of the said sequestration, to such person in whose possession the said effects were so seized, to and for the use of the said United Company; and if such effects are not sufficient to produce the sum so to be recovered, and the said costs, the said Supreme Court of Judicature, at Fort William in Bengal, is further empowered to award and issue such process of execution for the deficiency, as is heretofore provided for levying money recovered by judgment and costs; and if judgment shall, in any case, pass for the said United Company, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby authorized and empowered, to award and order costs of the said suit, and the expense of the said sequestration, and all the damages occasioned thereby, being first taxed, ascertained, and assessed by the proper officer, to be paid by the said plaintiff to the person in whose possession the said effects were seized, to and for the use of the United Company, and the same shall be levied by such process as is herein before provided for levying costs.

If no appearance after four sequestrations, and after two years from service of summons,

and plaintiff make proof verifying his demand,

cause to be heard and Court to give judgment,

and if for plaintiff, fi. fa. to issue to sell effects sequestered,

and for residue, if insufficient.

If judgment for Company, costs, and expences of sequestration and damages, to be awarded to them, &c.

XVII. "And whereas contracts or agreements (1) in writing, may be entered into by some of the inhabitants of India, residing in the said provinces or districts of Bengal, Behar, and Orissa, or some of them, or some part thereof, with our *British* subjects, or some of them, wherein such inhabitant or inhabitants may agree, that, in case of dispute, the matter should be heard and determined in the said Supreme Court of Judicature, at Fort William in Bengal, and whereupon a cause or causes of action may arise, exceeding in value, respectively, the sum of five hundred current rupees, and suits may be brought thereupon in some of the Courts of Justice, already established in the said provinces or districts;" We do hereby further grant, ordain, establish, and appoint, that in such cases it shall be lawful for either party, before or after sentence or judgment pronounced therein, by his, her, or their humble petition, suggesting such agreement in writing as aforesaid, and verifying the same upon oath, to appeal to the said Supreme Court of Judicature, at Fort William in Bengal, and upon such petition preferred, and filed of record in the said Supreme Court of Judicature at Fort William in Bengal, the said Supreme Court of Judicature, at Fort William in Bengal, may, and is hereby authorized to, award and issue a writ or precept, to be prepared in manner and form above mentioned, directed to the other party or parties, commanding him, her, or them, immediately to surcease proceeding further in such suit or suits, and thereupon such Supreme Court shall determine thereupon, according to right and justice, in like manner as if no proceedings had been in such other Court of Justice.

Where agreements in writing between inhabitants of India and British subjects, that matter may be determined in the Supreme Court, (cause of action exceeding 500 current rupees) and suits shall be brought in the Courts, in the provinces.

Either party may appeal to the Supreme Court, which is to cause proceedings in other courts to surcease, and the Supreme Court to determine thereupon.

XVIII. And it is our further will and pleasure, and we do hereby, for us, our heirs and successors, grant, ordain and establish, that the said Supreme Court of Judicature, at Fort William in Bengal, should also be a Court of Equity, and shall and may have full power and authority to administer justice, in a summary manner, as nearly as may, according to the rules and proceedings of our High Court

Supreme Court to be a Court of Equity, as the Court of Chancery in Great Britain.

(1) See § XIII. *ante* 11.

Upon a bill filed, to issue subpœna, and compel appearance, &c.

of Chancery in Great Britain; and upon a bill filed, to issue subpœnas, and other process, under the seal of the said Supreme Court of Judicature at Fort William in Bengal, to compel the appearance and answer, upon oath, of the parties therein complained against, and obedience to the decrees and orders of the said Court of Equity, in such manner and form, and to such effect, as our High Chancellor of Great Britain doth, or lawfully may, under our great seal of Great Britain.

Supreme Court to be a Court of Oyer and Terminer, and Gaol Delivery for Calcutta and factory of Fort William and factories subordinate.

XIX. And it is our further will and pleasure, and we do hereby grant, ordain, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall also be a Court of Oyer and Terminer, and Gaol Delivery, in and for the town of Calcutta, and factory of Fort William in Bengal, aforesaid, and the limits thereof, and the factories subordinate thereunto; and shall have the like power and authority as Commissioners, or Justices of Oyer and Terminer and Gaol Delivery, have or may exercise, in that part of Great Britain called England, to enquire, by the oaths of good and sufficient men, of all treasons, murders, and other felonies, forgeries, perjuries, trespasses, and other crimes and misdemeanors, heretofore had, done, or committed, or which shall hereafter be had, done, or committed within the said town or factory, and the limits aforesaid, and the factories subordinate thereto (1); and for that purpose to issue their warrant or precept, to be prepared in manner above-mentioned, and directed to the said Sheriff, commanding him to summon a convenient number, therein to be specified, of the principal inhabitants, resident in the said town of Calcutta, being subjects of Great Britain, of us, our heirs and successors, (2) to attend and serve at a time and place, therein also to be specified, as a Grand Jury or Inquest, for us, our heirs and successors, and present to the said Supreme Court of Judicature, at Fort William in Bengal, such crimes as shall come to their knowledge, and the said

With like powers as Justices of Oyer and Terminer in England.

To enquire of all offences within limits of jurisdiction.

Precept to Sheriff to summon Grand Juries,

subjects of His Majesty.

(1) 26 Geo. III., c. 57, § 29. 33 Geo. III., c. 52, § 67. 9 Geo. 4, c. 74, §§ 56. 127.

(2) See 13 Geo. III., c. 63, § 34, which is extended by 7 Geo. IV, c. 37, § 1, and see 2 and 3 W. 4, c. 117, § 2. and the Jury Rules, *post*, vol. 2.

crimes and offences to hear and determine, by the oaths of other good and sufficient men, being subjects of Great Britain, of us, our heirs or successors, and resident in the said town of Calcutta, and for that purpose to issue a summons, or precept, prepared in such manner as is before mentioned, and directed to the said Sheriff, commanding him to summon a convenient number, to be therein specified, of such British subjects as aforesaid, to be and appear, at a time and place therein to be specified, and to try the said indictment or inquest; and if any such Grand or Petit Jury, so summoned as aforesaid, shall refuse or neglect to attend, according to such summons, and be sworn upon inquest, we do hereby further empower the said Supreme Court of Judicature, at Fort William in Bengal, to punish the said contempt, by fine or imprisonment, or both; and we do further empower the said Supreme Court of Judicature, at Fort William in Bengal, in like manner, and under the like penalties, to cause all such witnesses as justice shall require, to be summoned, and to administer to them, and each of them, the proper oaths, that is to say, an oath upon the Holy Evangelists of God, to such as profess the Christian religion; and to others, such oaths, and in such manner, as the said Supreme Court of Judicature, at Fort William in Bengal, shall esteem to be most binding upon their consciences; and to proceed to hear, examine, try, and determine, the said indictments and offences, and to give judgment thereupon, and award execution thereof; and in all respects to administer criminal justice, in such or the like manner and form, or as nearly as the condition and circumstances of the place and the persons will admit of, as our Courts of Oyer and Terminer, and Gaol Delivery, do or may, in that part of Great Britain called England; and we do further authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, in like manner to inquire, hear, and determine, and to award judgment and execution of, upon, and against all treasons, murders, felonies, forgeries, perjuries, trespasses, crimes, misdemeanors, and oppressions, had, done, or committed, or which shall hereafter be had, done, or committed, in the districts, provinces, or countries called Bengal, Behar, and Orissa, by any of the subjects of us, our heirs or

To summon Petit Juries.

Punishment of contempt for non-attendance of Jurors.

Witnesses to be summoned and sworn.

Criminal justice to be administered as in Courts of Oyer and Terminer in England.

Jurisdiction over all offences committed in Bengal, &c., by any subject of his Majesty,

or any person in the service of the Company, or of any such subject;

And to issue Bench Warrant, &c. as Courts of Oyer and Terminer in England.

successors, or any other person or persons, who shall, at the time of committing the same, have been employed by, or shall have been, directly or indirectly, in the service of the said United Company, or of any of the subjects of us, our heir or successors; and for that purpose to award and issue a writ or writs, to the said Sheriff, prepared in manner before mentioned, commanding him to arrest and seize the body and bodies of such offenders, and bring him or them to Fort William aforesaid, and him or them to keep, until he or they shall be delivered, by due course of law, and to do all other acts which shall be necessary for the due administration of criminal justice, in such manner and form, or as nearly as the circumstances and condition of the case will admit of, as our Courts of Oyer and Terminer and Gaol Delivery, may do, in that part of Great Britain called England; and we do further ordain and establish, that in such cause, it shall not be lawful for such offender to object the to locality of the jurisdiction of the Court, or the Grand or Petit Jury; but he shallb e indicted, arraigned, tried, convicted, and punished, or acquitted and demeaned, in all respects, as if the crime had been committed within the said town of Calcutta, or factory of Fort William, or the limits thereof.

Offender cannot object to the locality of the Court's jurisdiction or to the Juries; but is to be tried, &c. as if the crime had been committed in Calcutta.

Supreme Court may reprieve or suspend execution of sentence, until the King's pleasure is known, to whom a state of the case, &c is to be sent.

XX. "And whereas cases may arise, wherein it may "be proper to remit the general severity of the law." (1) we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to reprieve and suspend the execution of any capital sentence, wherein there shall appear, in their judgment, a proper occasion for mercy, until our pleasure shall be known; and they shall in such case transmit to us, under the seal of the Supreme Court of Judicature, at Fort William in Bengal, a state of the said case, and of the evidence, and of their reasons for recommending the criminal to our mercy; and in the mean time, they shall cause such offender to be kept in strict custody, or deliver him or her out to sufficient mainprise or bail, as the circumstances shall seem to require.

In the mean time the offender may be detained or delivered on bail.

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(1) But the Court is now empowered, under §. 29. 9. G. 4. c. 74., to order capital offenders to be transported instead of being left for execution.—See also Act 31. of 1838, *post*.

XXI. And to the end that the said Court of Requests,(1) and the said Court of Quarter-Sessions, (2) erected and established, at Fort William in Bengal, by the said charter of our said Royal Grandfather, made in the twenty-sixth year of his reign, and the Justices, Sheriffs, and other Magistrates, thereby appointed for the said districts, may better answer the ends of their respective institutions, and act more conformably to law and justice, it is our further will and pleasure, and we do hereby further grant, ordain, and establish, that all and every the said Courts and Magistrates shall be subject to the order and control of the said Supreme Court of Judicature, at Fort William in Bengal, in such sort, manner, and form, as the inferior Courts and Magistrates of, and in that part of Great Britain called England are, by law, subject to the order and control of our Court of King's Bench; to which end, the said Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered and authorized, to award and issue a writ or writs of Mandamus, Certiorari, Procedendo, or error, to be prepared in manner above mentioned, and directed to such Courts or Magistrates, as the case may require, and to punish any contempt of a wilful disobedience thereunto, by fine and imprisonment.

Court of Requests and Quarter Sessions established by Charter, 26 G. 2.

and Justices, Sheriffs, and other Magistrates, subject to control of Supreme Court, as inferior Courts in England are to the Court of King's Bench.

Court may issue writs of Mandamus, Certiorari, &c. and punish contempt, by fine and imprisonment.

XXII. And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall be a Court of Ecclesiastical Jurisdiction, and shall have full power and authority to administer and execute, within and throughout the said provinces, districts, or countries, called Bengal, Behar, and Orissa, and towards and upon our British subjects there residing, the Ecclesiastical law, as the same is now used and exercised in the diocese of London, in Great Britain, so far as the circumstances and occasions of the said provinces and people shall admit, or require: and to that purpose, we give and grant to the said Supreme Court of Judicature, at Fort William

Supreme Court to exercise Ecclesiastical Jurisdiction in Bengal, Behar, and Orissa, on British subjects, as is exercised in the diocese of London.

(1) See 39 & 40 G. III. c. 79, §. 17, under which the Governor-General and Council are authorised to alter the forms of proceeding, and extend the jurisdiction of the Court of Requests, and note thereto, *post*.

(2) See Charter 26 G. 2. Appendix;—13. G. 3. c. 63. § 38.—26. G. 3. c. 57, § 29.—33. G. 3, c. 52, § 158.—39, & 40. G. 3, c. 79, § 13.

And see Mr. Justice Ryan's Charge to the Grand Jury, April 1829, Appendix.

Power to proceed in all causes, suits, &c. against British subjects residing in Provinces.

in Bengal, full power and authority to take cognizance of, and proceed in all causes, suits, and business, belonging and appertaining to the Ecclesiastical Court, before the said Supreme Court of Judicature, at Fort William in Bengal, in whatsoever manner to be moved, as well at the instance or promotion of parties, as of office, mere or mixed, against any of our British subjects, residing at the said provinces, countries, or districts, and which, by the law and custom of the said diocese of London, are of Ecclesiastical cognizance; and the said causes, suits, and business, with their incidents, emergents, and dependents, and whatsoever is thereto annexed, and therewith connected, to hear, dispatch, discuss, determine; and also to grant probates, under the same seal of the said Supreme Court of Judicature, at Fort William in Bengal, of the last wills and testaments of all or any of the said British subjects, of us, our heirs and successors, dying within the said three provinces, countries, or districts of Bengal, Behar, and Orissa; and to commit letters of administration under the same seal, of the goods, chattels, credits, and other effects whatsoever, of such British subjects as aforesaid, who shall die intestate, (1) within the said three provinces, countries, or districts, or who shall not have named an executor, resident in such districts, or where the executor, being duly cited, according to the form now used for that purpose, in the said diocese of London, shall not appear, and sue forth such probate, annexing the will to the said letters of administration, where such person shall have left a will without naming any executor, or any person for executor, who shall then be alive and resident within the said three provinces, countries, or districts, and who, being duly cited thereunto, will appear, and sue forth a probate thereof; and to sequester the goods, chattels, credits, and other effects whatsoever, of such person so dying, in cases allowed by law, as the same is, and may now be used in the said diocese of London; and to demand, require, take, hear, examine, and allow, and, if occasion require, to disallow and reject the account of them, in such manner and

To grant probates of wills of British subjects, dying within Bengal, Behar, and Orissa.

And letters of administration of intestates, or where executor absent.

Form of proceeding therein, as in the diocese of London.

Administration when no executor named.

To sequester estates of deceased persons.

To allow and reject accounts.

(1) Administration where no next of kin or creditor appears, to be granted to Registrar. 39 & 40. G. 3. c. 79 § 21.—When executors appoint Attornies.—See 55 G. 3. c. 84. § 2.—See also 4. G. 4 c. 81, § 51.—6 G. 4, c. 61.

form as is now used, or may be used in the said diocese of London, and to do all other things whatsoever, needful and necessary in that behalf: provided always, and we do hereby authorize and require the said Supreme Court of Judicature, at Fort William in Bengal, in such cases as aforesaid, where letters of administration shall be committed, with the will annexed, for want of an executor appearing in due time to sue forth the probate, to reserve in such letters of administration full power and authority to revoke the same, and to grant probate of the said will to such executor, whenever he shall duly appear, and sue forth the same: and we do hereby further authorize and require the said Supreme Court of Judicature, at Fort William in Bengal, to grant and commit such letters of administration, according to the course now used, or which lawfully may be used, in the said diocese of London, to the lawful next of kin of such person so dying as aforesaid, and, in case no such person then be residing within the jurisdiction of the said Supreme Court of Judicature, at Fort William in Bengal, or, being duly cited, shall not appear, and pray the same, to the principal creditor of such person, or such other creditor as shall be willing or desirous to obtain the same; and for want of any creditor appearing, then to such other person or persons who shall be thought proper by the said Supreme Court of Judicature, at Fort William in Bengal. (1)

Proviso, as to reserving power to grant probate when executor appears after letters of administration granted.

To whom letters of administration are to be granted.

XXIII. And we do hereby further enjoin and require, that every person, to whom such letters of administration shall be committed, shall, before the granting thereof, give sufficient security, by bond, to the junior Justice of the said Supreme Court of Judicature, at Fort William in Bengal, for the payment of a competent sum of money, with two or more able sureties, respect being had in the sum therein to be contained, and in the ability of the sureties, to the value of the estate, credits, and effects of the deceased; which bond shall be deposited in the said Supreme Court of Judicature, at Fort William in Bengal, among the records thereof, and there safely kept, and a copy thereof shall also

Administrators to give security to the junior Justice, to the value of the estate.

How bond to be kept and recorded.

(1) See Note *ante*, 26.

be recorded among the proceedings of the said Supreme Court of Judicature, at Fort William in Bengal; and the condition of the bond shall be to the following effect:

Form of the condition of the bond.

"That if the above bounden administrator of the goods, "chattels, and effects of the deceased, do make, or cause to "be made, a true and perfect inventory of all and singular "the goods, credits, and effects of the said deceased, which "have or shall come to the hands, possession, or know-"ledge of him the said administrator, or the hands or pos-"session of any other person or persons for him, and the "same, so made, do exhibit, or cause to be exhibited, in-"to the Supreme Court of Judicature, at Fort William "in Bengal, at or before a day therein to be specified, "and the same goods, chattels, credits, and effects, and "all other the goods, chattels, credits, and effects of the "said deceased, at the time of his death, or which, at any "time afterwards, shall come to the hands or possession, or "to the hands and possession of any other person or persons "for him, shall well and truly administer according to law, "and further, shall make, or cause to be made, a true "and just account of his said administration, at or be-"fore a time therein to be specified, and all the rest "and residue of the said goods, chattels, credits, and ef-"fects, which shall be found remaining upon the said ad-"ministration account, the same being first examined and "allowed of, by the said Supreme Court of Judicature, "at Fort William in Bengal, shall deliver and pay unto "such person or persons respectively, as shall be lawfully "entitled to such residue, then this obligation to be void, "and of none effect, or else to remain in full force and vir-"tue:" and in case it shall be necessary to put the said bond in suit, for the sake of obtaining the effect thereof, for the benefit of such person or persons as shall appear to the said Supreme Court of Judicature, at Fort William in Bengal, to be principally interested therein, such person and persons from time to time, paying all such costs as shall arise from the said suit, or any part thereof, such person or persons shall, by order of the said Supreme Court, be allowed to sue the same, in the name of the said obligee, and the said bond shall not be sued in any other

Directions, if it shall be necessary to put the said bond in suit.

manner; and we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to order that the said bond shall be put in suit, in the name of the said junior Judge, or of his executor, whom we also authorize the said Supreme Court of Judicature, at Fort William in Bengal, to name and appoint for that special purpose.

XXIV. And we do hereby authorize the said Supreme Court of Judicature, at Fort William in Bengal, to constitute, and appoint such, and so many registers, proctors, apparitors, and other officers, as, from time to time, there shall be occasion for, and to do and perform all other matters and things, needful and necessary, in or concerning the premises, although, by their own nature, they may require a more special warrant or mandate.

Court to appoint Registers, Proctors, &c.

XXV. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to appoint guardians and keepers for infants, and their estates, according to the order and course observed in that part of Great Britain called England, and also guardians and keepers of the persons and estates of natural fools, and of such as are, or shall be deprived of their understanding or reason, by the act of God, so as to be unable to govern themselves and their estates, which we hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to inquire, hear, and determine, by inspection of the person, or by such other ways and means by which the truth may best be discovered and known.

Court to appoint Guardians of infants, and of insane persons, and of their estates.

XXVI. And it is our further will and pleasure, and we do hereby grant, ordain, establish, and appoint, that the said Supreme Court of Judicature, at Fort William in Bengal, shall *be a Court of Admiralty*, in and for the said provinces, countries, or districts, of Bengal, Behar and Orissa, and all other territories and islands adjacent thereunto, and which now are, or ought to be, dependent thereupon; and we do hereby commit and grant to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to take cognizance of, hear,

Supreme Court to be a Court of Admiralty.

With full power in all Causes civil and maritime,

And all pleas of contracts, debts, &c.,

and all matters civil and maritime whatsoever.

Extent of jurisdiction.

Which is to be exercised, as in England,

according to course of Admiralty there.

without formalities of law.

examine, try, and determine all Causes, (1) civil and maritime, and all pleas of contracts, debts, exchanges, policies of assurance, accounts, charter-parties, agreements, loading of ships, and all matters and contracts, which in any manner whatsoever relate to freight, or money due for ships hired and let out, transport-money, maritime usury or bottomry, or to extortions, trespasses, injuries, complaints, demands, and matters, civil and maritime, whatsoever, between merchants, owners, and proprietors of ships and vessels, employed or used within the jurisdiction aforesaid, or between others, contracted, done, had, or commenced, in, upon or by the sea, or public rivers, or ports, creeks, harbours, and places overflown, within the ebbing and flowing of the sea, and high-water mark, within, about, and throughout the said three provinces, countries, or districts, of Bengal, Behar, and Orissa, and all the said territories or islands adjacent thereunto, and dependent thereupon, the cognizance whereof doth belong to the jurisdiction of the Admiralty, as the same is used and exercised in that part of Great Britain called England, together with all and singular their incidents, emergents, and dependencies, annexed and connexed causes whatsoever, and to proceed summarily therein, with all possible dispatch, according to the course of our Admiralty of that part of Great Britain called England, without the strict formalities of law, considering only the truth of the fact, and the equity of the case.

Jurisdiction in regard to Crimes maritime,

according to Admiralty in England,

XXVII. And we do further commit to the said Supreme Court of Judicature, at Fort William in Bengal, full power and authority to enquire, hear, try, examine, and determine, by the oaths of honest and lawful men, being our British subjects, resident, in the said town of Calcutta, and not otherwise, (2) all treasons, murders, piracies robberies, felonies, maimings, forestalling, extortions, trespasses, misdemeanors, offences, excesses, and enormities and maritime Crimes whatsoever, according to the laws and customs of the Admiralty, in that part of Great Britain

(1) See proviso § XXVIII, *post*, and see the latter part of the following sec. for the power to *arrest* ships and persons, and as to proceedings generally in *causes* maritime.

(2) Altered by the Jury Act, 7 G. IV. c. 37. and 2 & 3, W. 4., c. 117.

called England, done, perpetrated, or committed upon the high seas, within the limits and jurisdiction aforesaid, (1) and to fine, imprison, correct, punish, chastise, and reform parties guilty, and all violators of the law, usurpers, delinquents, contumacious, absenters, masters of ships, mariners, rowers, fishers, shipwrights, and other workmen, exercising any kind of maritime affairs, according to the said civil (2) and maritime laws, ordinances, and customs, and their respective demerits, and to deliver and discharge persons imprisoned in that behalf, who ought to be delivered, and to take recognizances, obligations, stipulations, and cautions, as well to our use, as at the instance of other parties, and to put the same in execution, or to cause or command them to be executed; and also to arrest, or cause or command to be arrested, according to the Civil law, and the ancient customs of our High Court of Admiralty, in that part of Great Britain called England, all ships, persons, things, goods, wares, and merchandizes, for the premises and every of them, and for other causes whatsoever, concerning the same, wheresoever they shall be met with or found, in or throughout the said districts and jurisdictions aforesaid; and to compel all manner of persons in that behalf, as the case shall require, to appear and answer in the said Court, with power of using any temporal coercions, and inflicting mulcts and penalties, according to the laws and customs aforesaid; and moreover to compel witnesses, in case they should withdraw themselves for interest, fear, favour, or ill-will, or other cause whatsoever, to give evidence to the truth, in all and every the cause or causes above-mentioned, according to the exigencies of the law, and to proceed in such cause or causes, according to the civil and maritime laws and customs, as well as of mere office, mixed or promoted, at the instance of any party, as the case may require, and to promulge and interpose all manner of sentences and decrees, and put the same in execution, according to the course, and order of the Admiralty, as the same is now used in that part of Great Britain called England.

committed on the high seas within the limits and jurisdiction aforesaid,

to punish offenders according to civil and maritime law,

and to deliver and discharge them;

to take recognizances, &c.,

and to arrest ships, persons, goods, &c.,

and compel appearance under penalties,

and witnesses to give evidence.

Proceedings in such causes according to the Civil law and course of the Admiralty in England.

(1) See 33. G. 3. c. 52 § 156, and 53. G. 3. c. 155. §. 110, extending the admiralty jurisdiction of the Court.

(2) See proviso § XXVIII, *post*, as to causes maritime.

Affidavits and affirmations in the Court of Admiralty.

XXVIII. And we do hereby ordain and appoint, that all affidavits, taken in the said Supreme Court of Judicature, at Fort William in Bengal, or before any Justice therefore, shall be made on oaths administered in such form and manner as is before directed, in the case of witnesses to be examined before the said Supreme Court of Judicature, at Fort William in Bengal; and that in all civil cases, the affirmation in writing of a Quaker, which the said Court, or any justice of the said Supreme Court of Judicature, at Fort William in Bengal, as the case may require, are hereby authorized and empowed to take, shall be of the same weight, authority, and effect, as an affidavit upon oath; provided always that the several powers and authorities hereby to proceed in maritime causes, and according to the laws of the admiralty, shall extend and be construed to extend only to the subjects of us, our heirs, or successors, who shall reside in the kingdoms or provinces of Bengal, Behar, and Orissa, or some of them and to persons who shall, when the cause of suit or complaint shall have arisen, have been employed by, or shall then have been, direcly or indirectly, in the service of the said United Company, or of any of our subjects.

Proviso in causes maritime.

Jurisdiction to extend only to subjects of the King, resident in Bengal, &c. and persons employed by the Company or subjects.

All fines, &c. imposed by Supreme Court reserved to the King.

XXIX. And we do hereby reserve to ourselves, our heirs and successors, all amercements, fines, ransoms, and forfeitures, to be set and imposed by the said Supreme Court of Judicature, at Fort William in Bengal, or otherwise incurred: provided always, that it shall be lawful, and we hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to make such satisfaction to prosecutors of informations or indictments, as to the said Supreme Court of Judicature, at Fort William in Bengal, shall seem reasonable and fit, out of any fine to be by them set or imposed, upon any person or persons who shall be convicted on such prosecutions.

Satisfaction to be made to prosecutors out of fines set by the Court.

Appeal allowed to the King in Council, from judgments, &c. of Supreme Court,

XXX. And it is our further will and pleasure, and we do hereby direct, establish, and ordain that if any person shall find him, her, or themselves aggrieved, by any judgment, decree, order, or rule of the said Suprme Court of Judicature, at Fort William in Bengal, in any case whatsoever,

it may be lawful for him and them to appeal (1) to us, our heirs or successors, in our or their privy council, in such manner, and under such restrictions and qualifications, as are hereinafter mentioned, that is to say, in all judgments, decrees, or decretal orders, made by the said Supreme Court of Judicature, at Fort William in Bengal, in any civil cause, the party and parties against whom, or to whose immediate prejudice the said judgment, decree, or decretal order, shall be or tend, may, by his or their humble petition, to be preferred for that purpose to the said Supreme Court of Judicature, at Fort William in Bengal, pray leave to appeal to us, our heirs or successors, in our or their Privy Council, stating in such petition the cause or causes of appeal; and in case such leave to appeal shall be prayed by the party or parties, who is or are directed to pay any sum of money, or to perform any duty, the said Supreme Court of Judicature, at Fort William in Bengal, shall, and is hereby empowered to award, that such judgment, decree, rule, or order, shall be carried into execution, or that sufficient security shall be given, for the performance of the said judgment, decree, rule, or order, as shall be most expedient to real and substantial justice; provided always, that where the said Supreme Court of Judicature, at Fort William in Bengal, shall think fit to order the judgment, decree, rule, or order, to be executed, security shall be taken from the other party or parties, for the due performance of such order or decree, as we, our heirs or successors, shall think fit to make thereupon; and, in all cases, we will and require that security should also be given, to the satisfaction of the said Supreme Court of Judicature, at Fort William in Bengal, for the payment of all such costs as the said Supreme Court of Judicature, at Fort William in Bengal, may think likely to be incurred by the said appeal, and also for the performance of such judgment or order, as we, our heirs or successors, shall think fit to give or make thereupon; and upon such order or orders of the said Supreme Court of Judicature, at Fort William in Bengal, thereupon made, being performed to their satisfaction, the

by petition to that Court.

In any civil cause.

Stating causes of appeal.

Where party appealing directed to pay money, &c.

Court may award execution of judgment, &c., or security to be given, &c.

Provided that where judgment, &c. ordered to be executed, security be taken from the other party, &c.

And in all cases, security to be given for costs, and performance of judgment, on appeal.

(1) See Smoult's collection of orders, 19, 61, 69, 70, 71, 82.

said Supreme Court of Judicature, at Fort William in Bengal, shall allow the appeal, and the party or parties, so thinking him, her, or themselves aggrieved, shall be at liberty to prefer and prosecute his, her, or their appeal to us, our heirs or successors, in our or their Privy Council, in such manner and form, and under such rules, as are observed in appeals made to us, from our plantations or colonies, or from our islands of Guernsey, Jersey, Sark, and Alderney.

When and how appeal to be allowed, &c.

XXXI. And it is our further will and pleasure, and we do hereby direct and ordain, that, in all such cases, the said Supreme Court of Judicature, at Fort William in Bengal, shall certify and transmit, under the seal of the said Supreme Court of Judicature, at Fort William in Bengal, to us, or our heirs or successors, in our or their Privy Council, a true and exact copy of all the evidence, proceedings, judgments, decrees, and orders, had or made in such causes appealed.

Supreme Court on such appeal to transmit a copy of all evidence, &c.

XXXII. And it is our further will and pleasure, that in all indictments, informations, and criminal suits and causes whatsoever, the said Supreme Court of Judicature, at Fort William in Bengal, shall have the full and absolute power and authority, to allow or deny the appeal of the party pretending to be aggrieved, and also to award, order, and regulate the terms upon which such appeals shall be allowed, in such cases, in which the said Supreme Court of Judicature, at Fort William in Bengal, may think fit to allow such appeal,

In criminal cases the Court may allow or deny appeal, and regulate the terms.

XXXIII. And we hereby also reserve to ourself, our heirs and successors, in our or their Privy Council, full power and authority, upon the humble petition of any persons aggrieved by a judgment, decree, or decretal or other order or rule of the said Supreme Court of Judicature, at Fort William in Bengal, to refuse or admit his, her, or their appeal therefrom, upon such terms, and under such limitations, restrictions, and regulations, as we or they shall think fit, and to reform, correct, or vary (1) such judgment, decree, or orders, as to us or them shall seem meet:

Reservation of power to the King to refuse an appeal,

and vary judgment, &c.

(1) See Smoult's collection of orders, 67, 68.

and we do further direct and ordain, that the said Supreme Court of Judicature, at Fort William in Bengal, shall, in all such cases, conform and execute, or cause to be executed, such judgments and orders, as we shall think fit to make in the premises, in such manner as any original judgment, decree, or decretal or other order or rule, by the said Supreme Court of Judicature, at Fort William in Bengal, should or might have been executed: provided always, that no appeal shall be allowed by the said Supreme Court of Judicature, at Fort William in Bengal, unless the petition for that purpose shall be preferred within six months (1) from the day of pronouncing the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute shall exceed the sum of one thousand pagodas. (2)

Court to execute judgments and orders of His Majesty.

No appeal to be allowed, except the petition be preferred within six months, and value exceed 1,000 pagodas.

XXXIV. Provided also, and we do hereby limit and declare, that the person or persons of the Governor-General, or of any of the Council, appointed in and by the above recited Act of Parliament, or of the Chief Justice, or any of the Justices, of the said Supreme Court of Judicature, at Fort William in Bengal, hereby erected and created, shall not, nor shall any of them respectively, be subject or liable to be arrested or imprisoned, upon any action, suit, or proceeding in the said Court, except in cases of treason or felony; nor shall the said Supreme Court of Judicature, at Fort William in Bengal, be competent to hear, try, and determine any indictment or information, against the said Governor-General, or any of the said Council, for the time being, for any offence, not being treason or felony, which the said Governor-General, or any of the said Council, shall or may be charged with having committed, in Bengal, Behar, or Orissa, any thing hereinbefore contained to the contrary notwithstanding, but in all such cases above mentioned, wherein a Capias, or process, for arresting the body, is hereby given and provided, it shall and may be lawful for the said Supreme Court of Judicature,

Governor-General and Council, Chief and other Justices, not liable to arrest, except for treason or felony.

Where a Capias is provided in other cases.

(1) See Smoult's collection of orders 19, and see cases collected in Appendix.

(2) But see in Appendix a copy of her Majesty's order in Council, dated 10th April 1838, in reference to appeals from the Courts within the territories under the Government of the East India Company.

Their goods and estates may be seized and sequestered.

at Fort William in Bengal, to order the goods and estate of such persons to be seized and sequestered, until he or they respectively shall appear, and yield obedience to the judgment, decree, decretal, or other order or rule of the said Court.

Court Room for holding Supreme Court, to be appointed by Judges.

XXXV. And it is our further will and pleasure, and we do hereby direct, ordain, and appoint, that the said Chief Justice, and other Justices, shall respectively assemble themselves, in a proper court or room, to be by them appointed for that purpose, forthwith after their respective arrivals, at the said town of Calcutta in Bengal aforesaid; and, before they shall proceed to execute the above mentioned powers or authorities, or any of them, the said Chief Justice shall then and there take an oath, in the most solemn manner, that he will, to the best of his knowledge, skill, and judgment, duly and justly execute the office of Chief Justice of the said Supreme Court of Judicature, at Fort William in Bengal, and impartially administer justice in every cause, matter, or thing, which shall come before him, and shall also take the oath of allegiance and supremacy, and make and subscribe the declaration against transubstantiation, in such manner and form, as the same are, by law, appointed to be taken or made in Great Britain, of which oaths a record shall be forthwith made. And we do hereby authorize the said Puisne Justices, or so many of them as shall be so assembled, to administer the said oaths and declarations, and make such record thereof accordingly; after which the said Puisne Justices, or so many of them as shall then and there be present, shall take the like oaths, and make and subscribe the like declarations, only changing what ought to be changed for that purpose, before the said Chief Justice, of which oaths also a record shall be forthwith made; and we do hereby authorize the said Chief Justice, to administer the said oaths and declarations, and record the same accordingly; or if the said Chief Justice, or any other of the said Justices, shall be dead, or unavoidably absent, by sickness or otherwise, we do hereby authorize the next Justice of the said Supreme Court of Judicature, at Fort William in Bengal, who shall be there

Chief Justice to be sworn.

Puisne Justices to be sworn.

Oaths how to be administered.

present, to take and administer the said oaths, and act, in all respects, as the Chief Justice should have done; and we do hereby further ordain and establish, that all and every succeeding Chief Justice and Puisne Justice shall, before he or they be capable of exercising the said office, respectively take, in open court, the like oaths, and make and subscribe the like declaration, only changing what ought to be changed for that purpose, whereof records shall be made, and filed among the other records of the Court, from time to time; and after the said Chief Justice and Puisne Justices, or so many of them as shall then and there assemble, and be present, shall have taken the said oaths, and made and subscribed the like declaration, the said Supreme Court of Judicature at Fort William in Bengal, shall be proclaimed and published in due manner, and proceed forthwith to the execution of the several authorities hereby vested in it.

All future Justices to be sworn before they can act.

Supreme Court to be proclaimed.

XXXVI. And it is our further will and pleasure, that from and after such publishing and proclaiming of the said Supreme Court of Judicature, at Fort William in Bengal, the said Mayor's Court of Calcutta, at Fort William in Bengal, aforesaid, granted, erected, and created, by and in the above-mentioned charter, made in the twenty-sixth year of our said Royal Grandfather, and also the Court of Record, in nature of a Court of Oyer and Terminer and Gaol Delivery, erected and created by the said Charter and all the authority thereby given to the President, or Governor or Council, of Fort William in Bengal, to be or act as Commissioners of Oyer and Terminer and Gaol Delivery; and every clause and article in the said charter which extends or relates to the establishment of the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Court of Oyer and Terminer and Gaol Delivery, or to the civil, criminal, or ecclesiastical jurisdiction of the said Courts, or any of them, shall cease, determine, and be utterly void, to all intents and purposes whatsoever: provided always, that no judgment, decree, decretal or other order, rule, or act of the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Courts of Oyer and Terminer and Gaol Delivery

The Mayor's Court erected by Charter 26 George II., and every clause therein relating to said Court and to the Court of Oyer & Terminer thereby established, to be void after proclaiming of Supreme Court.

Proviso that no Judgments, &c. of said Courts, shall be affected thereby.

respectively, theretofore legally pronounced, given, had, or done, shall be thereby avoided, but shall remain in full force and virtue, as if these presents had not been made; nor shall any indictment, information, action, suit, cause, or proceeding, depending in the said Mayor's Court of Calcutta, at Fort William in Bengal, or in the said Courts of Oyer and Terminer and Gaol Delivery, be abated or annihilated, but the same shall be transferred, in their then present condition respectively, to, and subsist and depend in the said Supreme Court of Judicature, at Fort William, to all intents and purposes, as if they had been respectively commenced in the last mentioned Court; and we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to proceed accordingly, in all such indictments, informations, actions, suits, causes, and proceedings, and to make such orders respecting the same, and also respecting any sum or sums of money belonging to the suitors at the said Mayor's Court of Calcutta, at Fort William in Bengal, as the said Mayor's Court of Calcutta, at Fort William in Bengal, or the said Court of Oyer and Terminer and Gaol Delivery, might have made, or as the said Supreme Court of Judicature, at Fort William in Bengal, is hereby empowered to make, in causes commenced or depending before the said Supreme Court of Judicature, at Fort William in Bengal, for which purpose it is our further will and pleasure, that all the records, muniments, and proceedings whatsoever, of or belonging to the said Mayor's Court of Calcutta, at Fort William in Bengal, or to the said Courts of Oyer and Terminer and Gaol Delivery, shall be delivered over, deposited, and preserved among the records of the said Supreme Court of Judicature, at Fort William in Bengal.

Proceedings depending in said Courts not to be abated, but transferred to Supreme Court.

Which is to proceed as if same commenced therein.

Records of said Courts to be dilivered over to Supreme Court.

XXXVII. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal (respect being had to the seasons of the year, and the convenience of the suitors) to settle and appoint proper terms and law days, and days for sitting after term, and to proclaim, hold, and adjourn the sessions of Oyer, and Terminer, and Gaol Delivery, and Admiralty Sessions, as to them

Supreme Court to appoint terms and law days, and sittings after term,

And Sessions of Oyer and Terminer, and

shall seem most expedient; provided nevertheless, that the said Supreme Court of Judicature, at Fort William in Bengal, shall, and they are hereby required to appoint not less than four terms in the year, each term consisting of four weeks at the least, in each year, and sittings after each term, each sitting to consist of fourteen days, if the business of the said Supreme Court of Judicature, at Fort William in Bengal, be not sooner dispatched; and that the said Supreme Court of Judicature, at Fort William in Bengal, do in each year hold two Sessions of Oyer and Terminer and Gaol Delivery.

Gaol Delivery, and Admiralty Sessions.

Proviso, not less than 4 terms of 4 weeks, and sittings 14 days, if, &c.

And two Sessions every year

XXXVIII. And we do hereby authorize and empower the said Supreme Court of Judicature, at Fort William in Bengal, to frame such rules of practice, and make such standing orders, for administration of justice, and the due exercise of the civil, criminal, admiralty, and ecclesiastical jurisdiction hereby created, and to do all such other things as shall be found necessary thereunto, so as the said Supreme Court of Judicature, at Fort William in Bengal, shall, from time to time, transmit the same, under the seal thereof, to us, our heirs or successors, in our Privy Council, for our approbation, control, or alteration: and we do hereby reserve to us, our heirs and successors, with the advice of our or their Privy Council, full power and authority to approve, reject, control, or vary the same, and to make such new and other rules of practice, and rules and orders, for the process of the said Supreme Court of Judicature, at Fort William in Bengal, as to us or them shall appear fit and convenient, which we will and ordain shall be in force, from such time or times as the same shall be respectively transmitted to the said Supreme Court of Judicature, at Fort William in Bengal.

Court to frame Rules of practice, and make standing orders, &c.

And transmit them to Privy Council for approval.

XXXIX. And we do further hereby strictly charge and command all our governors, commanders, magistrates, officers, and ministers, civil and military, and all our faithful and liege subjects whatsoever, in and throughout the said provinces, countries or districts of Bengal, Behar, and Orissa, and all other lands, islands, or territories adjacent thereunto, and which are, or ought to be dependent

All Governors and King's officers and subjects, to be obedient to the Supreme Court.

thereupon, that in the execution of the several powers, jurisdictions, and authorities hereby erected, created, and made, they be aiding, assisting, and obedient, in all things, unto the said Supreme Court of Judicature, at Fort William in Bengal, as they will answer the contrary at their peril.

Dated the 26th March, 14th year of the reign.

In witness whereof, we have caused these our letters to be made patent. Witness ourself, at Westminster, this twenty-sixth day of March, in the fourteenth year of our reign.

By writ of Privy Seal,

COCKS.

STATUTES

RELATING TO

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL.

STAT. 13 GEO. 3 CAP. 63.

" *An* Act *for establishing certain Regulations for* " *the better Management of the Affairs of the* East " India *Company, as well in* India *as in* Europe."

[1773.]

SEC. XIII. AND WHEREAS his late Majesty, King " *George* the Second, did, by his *letters patent, bearing* " *date at Westminster, the eighth day of January, in* " *the twenty-sixth year of his reign,* grant unto the said " United Company of Merchants of *England,* trading to " the *East Indies,* his Royal Charter, thereby, amongst " other things, constituting and establishing Courts of civil, " criminal, and ecclesiastical jurisdiction, at the said " United Company's respective settlements at *Madras-* " *patnam, Bombay,* on the Island of *Bombay,* and *Fort* " *William in Bengal*; which said Charter does not suffi- " ciently provide for the due administration of justice in " such manner as the state and condition of the Company's " presidency of *Fort William* in *Bengal,* so long as the " said Company shall continue in the possession of the " territorial acquisitions before mentioned, do and must require;" be it therefore enacted, by the authority aforesaid, that it shall and may be lawful for his Majesty, by

Recites Charter, dated 8th Jan. 1753, 26 G. 2.

Authorises His Majesty to establish a Supreme Court

of Judicature at Fort William in Bengal, to consist of a Chief Justice and three oher Judges.

charter or letters patent under the great seal of *Great Britain*, to erect and establish a Supreme Court of Judicature at Fort William aforesaid, to consist of a Chief Justice and three other Judges, (1) being Barristers in *England* or *Ireland*, of not less than five years standing, to be named from time to time by his Majesty, his heirs and successors; which said Supreme Court of Judicature, shall have, and the same Court is hereby declared to have, full power and authority to exercise and perform all civil, criminal, admiralty, and ecclesiastical jurisdiction, and to appoint such clerks and other ministerial officers of the said Court, with such reasonable salaries as shall be approved of by the said Governor-General in Council; and to form and establish such rules of practice, and such rules for the process of the said Court, and to do all such other things as shall be found necessary for the administration of Justice, and the due execution of all or any of the powers which, by the said Charter, shall or may be granted and committed to the said Court; and also shall be at all times a Court of Record, and shall be a Court of Oyer and Terminer and Gaol Delivery, in and for the said town of *Calcutta* and Factory of Fort William in *Bengal* aforesaid, and the limits thereof, and the factories subordinate thereto.

To exercise all Civil, Criminal, Admiralty, and Ecclesiastical Jurisdiction, to appoint Officers, and establish Rules of practice and for process.

To be a Court of Record, and of Oyer and Terminer and Gaol Delivery.

Charter and Jurisdiction and powers to be thereby established to extend to all *British* subjects, residing in Bengal, &c.

XIV. PROVIDED, NEVERTHELESS, and be it further enacted, by the authority aforesaid, that the said new Charter, which his Majesty is herein before empowered to grant, and the jurisdiction, powers and authorities to be thereby established, shall and may extend to all *British* subjects who shall reside in the kingdoms or provinces of *Bengal*, *Behar* and *Orissa*, or any of them, under the protection of the said United Company; and the same Charter shall be competent and effectual, and the Supreme Court of Judicature therein and thereby to be established, shall have full power and authority to hear and determine all complaints against any of his Majesty's subjects, for any crimes, misdemeanors or oppressions committed, or to be committed, and also to entertain, hear and determine

Supreme Court to have power to try all complaints, against subjects of the King, for crimes and offences,

(1) See note (1) *ante*. 2.

any suits or actions whatsoever, against any of his Majesty's subjects in *Bengal, Behar* and *Orissa*, and any suit, action or complaint, against any person who shall at the time when such debt or cause of action or complaint shall have arisen, have been employed by, or shall then have been, directly or indirectly, in the service of the said United Company, or of any of his Majesty's subjects. (1)

and all actions against them and persons in service of Company, or subjects.

XV. PROVIDED ALSO, that the said Court shall not be competent to hear, try or determine any indicment or information against the said Governor-General, or any of the said Council for the time being, for any offence (not being treason or felony) which such Governor-General, or any

Court not competent to hear and determine indictments or informations against the Governor-General, &c. except, &c.

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(1) As to whether the jurisdiction of the Court is to be traced to this Statute as "its fountain head," and not to the Charter, the following observations of Sir Elijah Impey, are worthy of consideration. "But I then understood, and now "contend, that the legality of the jurisdiction of the Supreme Court (except as to "some special regulations ordained by that act), does not depend on any authority "conveyed to his Majesty by the 13 G. 3. and that it is no otherwise, as to "the present question, an enabling statute, than by removing the then existing "Courts in Calcutta, during the continuance of which, under the Charter of "G. 2, his Majesty could not create any new Court, but they being actually "thereby abolished, it became lawful for his Majesty to grant a new Charter "of Justice, and republish his laws in that town, as his predecessors had "done. And as the territorial acquisitions of Bengal, Behar, and Orissa, really "were, and were by Act of Parliament stated to be, in the East India Com-"pany, and more particularly, as the Act of the 13 G. 3, assumed a civil juris-"diction over certain inhabitants of those provinces, described by that Act, the "legislature had thereby recognized those provinces to be part of the domi-"nions of the Crown, and the King, in fact, has done no more than exercise his "undoubted prerogative through those dominions, by giving a criminal juris-"diction over the persons answering to the same description as those over "whom the statute had before exercised a civil jurisdiction. If it was not "contrary to justice, that the Parliament should assume a right of civil juris-"diction, it could not be contrary to justice in the Crown, to grant a co-exten-"sive criminal jurisdiction; both rights are founded on the same claim. On "these grounds I contend, that his Majesty's prerogative was legally exerted in "granting the personal criminal jurisdiction in the provinces at large, without "the aid of the Act. But with respect to the local jurisdiction in the town of "Calcutta, though I equally contend that the authority of the 13 G. 3. "was not necessary to the legality of it; yet, if that had been necessary, it "will appear by the words of the Charter, compared with the words of the "13 G. 3, that it is expressly authorized by that Act."—*Sir Elijah Impey's Speech, ante*, 1.

The opinions of Puller, G. J., in the case of Rex v. Goculnoth Mullick and another, and of Russell, C. J., in the goods of Bebee Muttra, deceased, seem to rest the jurisdiction of the Court upon this statute. See Appendix.

of the said Council, shall or may be charged with having committed, in *Bengal, Behar* and *Orissa.*

Court to have jurisdiction in all actions by subjects of the King against inhabitants of India, residing in Bengal, &c., upon agreement between them where cause of action exceeds 500 rs. and defendant shall have submitted to jurisdiction.

Action may be brought in Supreme Court, or by Appeal from the Provincial Courts.

XVI. PROVIDED ALSO, AND BE IT ENACTED, that the said Supreme Court shall hear and determine any suits or actions whatsoever, of any of his Majesty's subjects against any inhabitant of *India*, residing in any of the said kingdoms or provinces of *Bengal, Behar*, or *Orissa*, or any of them, upon any contract or agreement, in writing, entered into by any of the said inhabitants with any of his Majesty's said subjects, where the cause of action shall exceed the sum of five hundred current rupees, and where the said inhabitant shall have agreed in the said contract, that, in case of dispute, the matter shall be heard and determined in the said Supreme Court; and all such suits or actions may be brought, in the first instance, before the said Court, or by appeal from the sentence of any of the Courts established in the said provinces, or any of them.

Governor-General, Council, or Judges, not subject to be arrested.

XVII. AND IT IS HEREBY FURTHER ENACTED AND PROVIDED, that nothing in this act shall extend to subject the person of the Governor-General, or any of the said Council, or Chief Justice and Judges respectively, for the time being, to be arrested or imprisoned upon any action, suit or proceeding in the said Court.

Appeal to be allowed to his Majesty in Council, from any judgment of Supreme Court.

XVIII. AND BE IT FURTHER ENACTED, by the authority aforesaid, that it shall and may be directed, in and by the said new Charter which his Majesty is herein before empowered to grant, that in case any person or persons whatsoever, shall think himself, herself or themselves aggrieved by any judgment or determination of the said Supreme Court of Judicature, to be established as aforesaid, he, she or they, shall and may appeal from such judgment or determination to his Majesty in Council, his heirs or successors, within such time, in such manner, and in such cases, and on such security, as his Majesty, in his said Charter, shall judge proper and reasonable to be appointed and prescribed." (1)

So much of the Charter,

XIX. AND BE IT FURTHER ENACTED, by the authority aforesaid, that so much of the said Charter, granted by his

(1) See Charter, § 33.

said late Majesty, as respects or relates to the establishment of the Mayor's Court at *Calcutta* aforesaid, in *Bengal*, or to the civil, criminal or ecclesiastical jurisdiction thereof, in the said United Company's settlement there, or the subordinates thereunto belonging, in case a new Charter shall be granted by his Majesty, in pursuance of this act, and shall be openly published at Fort William aforesaid, from and immediately after such publication, shall cease, determine, and be absolutely void, to all intents and purposes; but, nevertheless, the said Charter so granted by his said late Majesty, shall, in all other respects, and as for and concerning all or any other of the said Company's principal presidencies or settlements to which the same relates, or to any factories or places now or hereafter to be subordinate to such principal settlements, continue, be and remain in full force and virtue, according to the true intent and meaning thereof, and that as fully and effectually to all intents and purposes whatsoever, as if this act had never been made, or such new Charter as aforesaid, should never have been granted.

26 G. II. as respects the Mayor's Court at Calcutta to be repealed,

otherwise to be in full force.

XX. AND BE IT FURTHER ENACTED, by the authority aforesaid, that all the records, muniments, and proceedings whatsoever, of and belonging to the said Mayor's Court at Calcutta aforesaid, or to the Courts of Oyer and Terminer and Gaol Delivery at Fort William aforesaid, established by the said Charter of his said late Majesty, shall, from and immediately after such Court of Judicature, which his Majesty is herein before empowered to erect, shall be established at Fort William as aforesaid, be delivered over, preserved, and deposited for safe custody, in the said new Court of Judicature, to which all parties concerned shall and may resort, and have recourse, upon application to the said Court.

All records and muniments of Mayor's Court, or of Courts of Oyer and Terminer, at Fort William, to be delivered to, and preserved by, the new Court.

XXI. AND BE IT FURTHER ENACTED, by the authority aforesaid, that during such time as the territorial acquisitions shall remain in the possession of the said Company, the Court of Directors of the said United Company shall, and they are hereby required to, direct and cause to be paid, certain and established salaries to the Governor-General, and to each of the Council of the said United

Salaries established to be paid to the Governor-General and Council, and Chief Justice and Judges.

Company's Presidency of Fort William in *Bengal*, and to the Chief Justice, and each of the Judges of such Supreme Court of Judicature at Fort William, as shall be by the said new Charter established; that is to say, to the Governor-General, twenty-five thousand pounds by the year, and to each of the Council of the said United Company's Presidency of Fort William in *Bengal*, ten thousand pounds by the year; and to the Chief Justice eight thousand pounds by the year; and to each of the Judges of the said Supreme Court of Judicature at Fort William, six thousand pounds by the year; (1) and that such salaries shall be paid and payable to each and every of them respectively, for the time being, out of the said territorial acquisitions in the kingdoms of *Bengal*, *Behar* and *Orissa*.

Governor-General £25,000 by the year, Members of Council £10,000 Chief Justice £8,000, each of the Judges £6,000.

XXII. AND BE IT FURTHER ENACTED by the authority aforesaid, that the salaries of such Governor-General in Council, and of such Chief Justice and Judges of such Supreme Court of Judicature, as aforesaid, shall take place and commence in respect to all such persons who shall be resident in *Great Britain* at the time of their appointment, upon and from the day on which such persons shall embark from *Great Britain*; and that the salaries of all such persons who shall at the time of their appointment be resident in *India*, shall commence and take place from and after their respectively taking upon them the execution of their office, as aforesaid; and that all such salaries to such Governor-General and Council, and of such Chief Justice and Judges, shall be in lieu of all fees of office, perquisites, emoluments, and advantages whatsoever; and that no fees of office, perquisites, emoluments, or advantages whatsoever, shall be accepted, received or taken by such Governor-General and Council, or by such Chief Justice and Judges, as aforesaid, or any of them, in any manner, or on any account or pretence whatsoever, other than such salaries and allowances as are in and by this act directed to be paid to them respectively. (2)

When such salaries shall commence, if in Great Britain at the time of appointment.

When, if in India.

(1) See note (1) *ante*, 2.

(2) As to when the Governor-General's salary is to commence and cease. See 3 & 4 W. 4 c. 85, §§ 76, 77, 79.

XXIII. AND BE IT FURTHER ENACTED, by the authority aforesaid, that no Governor-General, or any of the Council of the said United Company's presidency of Fort William in *Bengal*, or any Chief Justice, or any of the Judges of the Supreme Court of Judicature at Fort William aforesaid, shall, directly or indirectly, by themselves, or by any other person or persons for his or their use, or on his or their behalf, accept, receive, or take, of or from any person or persons, in any manner, or on any account whatsoever, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, or any promise or engagement for any present, gift, donation, gratuity or reward; and that no Governor-General, or any of the said Council, or any Chief Justice or Judge of the said Court, shall carry on, be concerned in, or have any dealing or transactions by way of traffic or commerce of any kind whatsoever, either for his or their use or benefit, profit or advantage, or for the benefit or advantage of any other person or persons whatsoever, (the trade and commerce of the said United Company only excepted,) any usage or custom to the contrary thereof in any wise notwithstanding.

Governor-General, or Council, or Judges, not to accept any present;

nor be concerned in any transaction by way of traffic.

XXIV. AND BE IT FURTHER ENACTED, by the authority aforesaid, that from and after the first day af *August*, one thousand seven hundred and seventy-four, no person holding or exercising any civil or military office, under the Crown or the said United Company, in the *East Indies*, shall accept, receive, or take, directly or indirectly, by himself or any other person or persons on his behalf, or for his use or benefit, of and from any of the *Indian* Princes or Powers, or their Ministers or Agents, or any of the natives of *Asia*, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, upon any account, or on any pretence whatsoever; or any promise or engagement for any present, gift, donation, gratuity, or reward; and if any person holding or exercising any such civil or military office, shall be guilty of any such offence, and shall be thereof legally convicted in such Supreme Court at *Calcutta*, or in the Mayor's Court in any other of the said United Company's settlements, where such offence shall have been committed, every such person so convicted, shall forfeit double the value of such present, gift, donation,

No persons holding a Civil or Military office under the Crown or Company, shall accept any present, &c. from any Indian Prince or Native of Asia.

Penalty on persons offending and being convicted,

gratuity, or reward, so taken and received; (1) one moiety of which forfeiture shall be to the said United Company, and the other moiety to him or them who shall inform or prosecute for the same; and also shall and may be sent to *England*, by the order of the Governor and Council of the Presidency or settlement, where the offender shall be convicted, unless such person so convicted, shall give sufficient security to remove him or themselves within twelve months after such conviction. (2)

and may be sent to England unless, &c.

XXV. PROVIDED ALWAYS, AND BE IT FURTHER ENACTED, by the authority aforesaid, that nothing herein contained shall extend, or be construed to extend, to prohibit or prevent any person or persons who shall carry on or exercise the profession of a Counsellor at Law, a Physician, or a Surgeon, or being a Chaplain, from accepting, taking or receiving any fees, gratuities, or rewards, in the way of their profession.

Not to extend to Counsellors, Physicians, Surgeons, and Chaplains, receiving professional fees, &c.

XXX. AND BE IT FURTHER ENACTED, by the authority aforesaid, that no subject of His Majesty, his heirs and successors, in the *East Indies*, shall, upon any contract which shall be made from and after the said first day of *August*, one thousand seven hundred and seventy-four, take, directly or indirectly for loan (3) of any monies, wares, merchandise, or other commodities whatsoever, above the value of twelve pounds for the forbearance of one hundred pounds for a year; and so after that rate for a greater or less sum, or for a longer or shorter time; and that all bonds, contracts and assurances whatsoever, made after the time aforesaid, for payment of any principal or

No subject of his Majesty in India shall take on loan of monies, &c. above the rate of 12 per cent per annum.

All such securities to be void.

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(1) Repealed as to the penalty by 24 G. III. c. 25 § 47.—[*C.*]

(2) And by §§ 45, 46, of the same act, and by 33 G. III, c. 52, §§ 62, 63, "The receiving of gifts, or presents, to be deemed and taken to be extortion, and a misdemeanor at law, and the Court before whom such offence may be tried, shall have power to direct the present, or gift, to be restored to the party who gave the same; or any fine, which the Court shall enjoin, to be paid to the prosecutor, or informer, as the Court in its discretion shall think fit."

(3) See Smoult's collection of orders, title Usury, 50, 51, 133, &c.

The rate of interest for loans advanced, within the dominions of Native and independent Indian Sovereigns, by British subjects, domiciliated and residing within such dominions, is not limited to 12 per cent. 3 Bing. 193.

money to be lent, or covenanted to be performed upon, or for any usury, whereupon or whereby there shall be reserved or taken above the rate of twelve pounds in the hundred, as aforesaid, shall be utterly void. And all and every such person or persons whatsoever who shall, after the time aforesaid, upon any contract to be made after the said first day of August, one thousand seven hundred and seventy-four, take, accept, and receive, by way or means of any corrupt bargain, loan, exchange, shift, or interest of *any wares*, merchandises, or other thing or things whatsoever, or by any deceitful ways or means, or by any covin, engine, or deceitful conveyance, for the forbearing or giving day of payment for one whole year, of and for their money or other thing, above the sum of twelve pounds for the forbearing of one hundred pounds for a year, and so after that rate for a greater or lesser sum, or for a longer or shorter term, shall forfeit and lose, for every such offence, treble the value of the monies, wares, merchandises, and other things so lent, bargained, exchanged, or shifted, with costs of suit; one moiety whereof shall be to the said United Company, and the other moiety to him or them who will sue for the same in the said Supreme Court of Judicature, at Fort William in *Calcutta*, or in the Mayor's Court in any other of the said United Company's settlements, where such offence shall have been committed, by action of debt, bill, plaint, or information, in which no essoin, wager of law, or protection, shall be allowed; and in case no such action, bill, plaint or informaiton shall have been brought, and prosecuted with effect, within three years, that then, it shall and may be lawful to and for the party aggrieved, to sue and prosecute for the recovery of all sums of money paid, over and above such rate of interest.

And all such persons taking, by means of corrupt bargain, loan, &c. of any wares, &c., above the rate of 12 per cent. per annum, shall forfeit for every offence treble the value of the monies, wares, &c.

One moiety to go to the Company, and the other, to the Prosecutor.

XXXIV. AND BE IT FURTHER ENACTED, by the authority aforesaid, that all offences and misdemeanors which shall be laid, tried and enquired of in the said Supreme Court, shall be tried by a Jury of *British* subjects resident in the town of *Calcutta*, and not otherwise. (1)

All offences to be tried by a Jury of *British* subjects.

(1) The 7 G. 4, c. 37. § 1. provides, that all good and sufficient persons, resident within the town of Calcutta, not being the subjects of any foreign State, are capable of serving on Grand and Petit Juries.—See also 2 & 3 W. 4, c. 117. § 2. which

Company not to compound sentences of Supreme Court against Company's servants,

XXXV. AND BE IT FURTHER ENACTED, by the authority aforesaid, that after any judgment of the said Supreme Court of Judicature, or of any Court of Judicature, at any of the said United Company's settlements, against any of the said United Company's servants, civil or military, for any debt or penalty due or belonging to the said United Company, shall be made known to the Court of Directors for the time being of the said United Company, it shall not be lawful to release or compound such sentence or judgment, or to release, discharge, or put a stop to any prosecution, suit or action, commenced, or to be commenced, for carrying on any illicit trade, or for any debt or penalty due to the said United Company, or to restore any servant or servants whatever of the said Company, who shall have been removed or dismissed from his or their office or employment, for or upon account of any misbehaviour, without the consent of three parts in four of the Court of Directors, to be taken by ballot, and also the consent of three parts in four in number of the Proprietors of the said United Company, who shall be present, and give their votes by ballot, to be taken at a General Court to be specially called for that purpose, and of which fourteen days public notice, at the least, shall be given before the holding the same, and of the particular occasion for which such General Court shall be called. (1)

nor to restore any servant dismissed for misbehaviour,

without consent of three parts in four of Directors, and a like majority of Proprietors in a General Court.

Governor-General and Council to make Regulations for the good order and civil government of settlement of Fort William,

XXXVI. AND BE IT FURTHER ENACTED, by the authority aforesaid, that it shall and may be lawful for the Governor-General and Council of the said United Company's settlement, at Fort William in Bengal, from time to time, to make and issue such rules, ordinances, and regulations, (2) for the good order and civil government of the said United Company's settlement at Fort William aforesaid, and other factories and places subordinate, or to be subordinate thereto, as shall be deemed just and reasonable

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repeals so much of 7. G. 4. c. 37, § 3. as limits grand juries in all cases, and all juries for the trial of persons professing the christian religion, to persons only who profess the christian religion.

(1) See 33 G. III. c. 52. §§ 68. 69—[C.]

(2) See Police Regulations compiled by Smoult, 1819,

(such rules, ordinances, and regulations, not being repugnant to the laws of the realm,) and to set, impose, inflict, and levy, reasonable fines and forfeitures for the breach or non-observance of such rules, ordinances, and regulations; but nevertheless the same, or any of them, shall not be valid, or of any force or effect, until the same shall be duly registered and published in the said Supreme Court of Judicature, which shall be, by the said new charter, established, with the consent and approbation of the said Court, which registry shall not be made until the expiration of twenty days after the same shall be openly published, and a copy thereof affixed in some conspicuous part of the Court-house or place where the said Supreme Court shall be held; and from and immediately after such registry as aforesaid, the same shall be good and valid in law; but, nevertheless, it shall be lawful for any person or persons in *India*, to appeal therefrom to His Majesty, his heirs or successors, in Council, who are hereby empowered, if they think fit, to set aside and repeal any such rules, ordinances, and regulations respectively, so as such appeal, or notice thereof, be lodged in the said new Court of Judicature, within the space of sixty days after the time of the registering and publishing the same; and it shall be lawful for any person or persons in *England*, to appeal therefrom, in like manner, within sixty days after the publishing the same in England, and it is hereby directed and required, that a copy of all such rules, ordinances and regulations from time to time, as the same shall be so received, shall be affixed in some conspicuous and public place in the *India House*, there to remain and be resorted to, as occasion shall require; yet, nevertheless, such appeal shall not obstruct, impede, or hinder the immediate execution of any rule, ordinance, or regulation, so made and registered as aforesaid, until the same shall appear to have been set aside or repealed, upon the hearing and determination of such appeal. (1)

not being repugnant to laws of the realm.

Proviso that same shall not be valid, until duly registered in Supreme Court.

Appeal allowed to persons in India to King in Council, who may repeal such Regulations.

Persons in England may also appeal.

A copy of all such Regulations to be affixed in the India House.

(1) But see the power of the Governor-General in Council to legislate for all persons, British or Native, and for all Courts of Justice, whether established by his Majesty's Charter or otherwise, as prescribed by 3 & 4 W. 4. c. 85. §§ 43, 44, 45, 46. &c. The power of legislation which existed prior to this act, is stated

Governor-General and Council to transmit copies of Regulations to one of the Secretaries of State;

XXXVII. PROVIDED ALWAYS, AND BE IT ENACTED, by the authority aforesaid, that the said Governor-General and Council shall, and they are hereby required, from time to time, to transmit copies of all such rules, ordinances, and regulations, as they shall make and issue, to one of His Majesty's principal Secretaries of State for the time being, and that it shall and may be lawful to and for his Majesty, his heirs and successors, from time to time,

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by Sir Charles Grey (then Chief Justice of this Court) in his minute of the 2d October, 1829, as follows:—

"At present three distinct powers of legislation are vested by express enactment in the Governor-General in Council, and the Governors in Council of the other Presidencies. The 13 G. III. c. 63. §§ 36, 37, the 39 & 40 G. III. c. 79. §§ 18, 19. and 47, G. III. sess. 2. c. 68. §§ 1, 2, purport to empower the Governor-General and Governors in Council, for the good order and civil government of the settlement at Fort William, Madras and Bombay, respectively, and all places subordinate thereto, to make any regulations not repugnant to the laws of the realm, and to enforce them by reasonable fines, forfeitures, and corporal punishments, but such regulations are not valid, unless the Supreme Court of the Presidency will register them. An appeal, lies against them to the King in Council, and even without appeal, they may be set aside by His Majesty, under his sign manual. The 21 G. III. c. 70. § 23, and the 37 G. III. c. 142, § 8, the 39 & 40 G. III. c. 79, § 11, and the 47 G. III. sess. 2, c. 68, §. 3, give a power to the Governor-General in Council and Governors in Council, which in the first Statute is limited to the regulation of Provincial Courts, with a proviso that the expenses of the suitors shall not be increased. But in the 37 G. III. c. 142, § 8, the same power is mentioned as a power of making "A regular Code," affecting the rights, persons and property of the natives and others amenable to the Provincial Courts. These laws also, I suppose, may be disallowed by His Majesty in Council; but they are not directed to be registered in the Supreme Court, and in practice, I apprehend, are from time to time altered, according to orders from the Court of Directors and the Board of Commissioners for the affairs of India. Lastly, by the 53 G. III. c. 155, §§ 98, 99, 100. the Governor-General and Governors in Council, in their respective Presidencies, with the sanction of the Court of Directors, and of the Board of Commissioners, may impose duties and taxes within the towns of Calcutta, Madras, and Bombay, for the enforcing of which taxes, regulations are to be made by the Governor-General and Governors in Council, in the same manner as other regulations are made; which manner, as I have shown above, is two fold; and the Statute supplies no further directions to the Governor-General and Governors in Council to guide them in their choice between the two courses. For the levying of fines and forfeitures for breaches of these regulations, the Advocates-General of the Company, are directed to file informations in the Supreme Courts, and the Recorder's Court at Bombay; but the Recorder's Court has since been abolished; and in the Letters Patent by which the Supreme Court has been substituted in its room, it is declared, that the Court has no jurisdiction in any matters of Revenue, either within or beyond the limits of the town of Bombay. Besides these three powers of legislation, a general power of altering the Revenue, and of imposing new taxes, has been exercised

as they shall think necessary, to signify to the said United Company, under his or their sign manual, his or their disapprobation and disallowance of all such rules, ordinances, and regulations, and that from and immediately after the time, that such disapprobation shall be duly registered and published in the said Supreme Court of Judicature, at Fort William in Bengal, all such rules, ordinances, and regulations shall be null and void; but in case His Majesty, his heirs and successors shall not, within the space of two years from the making of such rules, ordinances, and regulations, signify his or their disapprobation or disallowance thereof, as aforesaid, that then, and in that case, all such rules, ordinances, and regulations, shall be valid and effectual, and have full force.

which, if his Majesty does not signify his disallowance thereof, shall be valid.

XXXVIII. AND BE IT FURTHER ENACTED, by the authority aforesaid, that the Governor-General and Council for the time being, of the said United Company's settlement, at Fort William aforesaid, and the Chief Justice and other Judges of the said Supreme Court of Judicature, shall and may, and they are hereby respectively declared to be, and to have full power and authority to act as Justices of the Peace for the said settlement, and for the several settlements and factories subordinate thereto; and to do and transact all matters and things which to the office of a Justice or Justices of the Peace do belong and appertain; and, for that purpose, the said Governor-General and Council, are hereby authorized and empowered to hold Quarter Sessions, within the said settlement of Fort

Governor-General and Council,

and the Chief Justice and Judges of the Supreme Court, to be Justices of the Peace.

Governor-General and Council to hold

"within the Provinces, and is alluded to more than once in Acts of Parliaments; "but, as there is no Act which expressly confers it, I suppose it rests on the "grant of the Dewanny, and on those Statutes, by which general powers of "Government, and of ordering the Revenues, have been given, or continued to "the Company, for limited periods.

2. "These powers cannot be said to be remarkably well defined. The "exercise of one of them has been extensive, beyond what seems to have "been at first foreseen by the Legislature; and it is not that which, in 1773, "was designed to be the only one, which has in fact been the most consider-"able. That which was established by the 13 G. III, c. 63, has been almost "a barren branch; and that which was given in 1781, expressly for the pur-"pose of making limited rules of practice for Provincial Courts, has produced "a new and extensive system of Laws, for a large portion of the human race."

Quarter Sessions.

William aforesaid, four times in every year, and the same shall be at all times a Court of Record. (1)

If Governor-General, President, &c. or any others holding office, &c. commit offences, the same may be tried and determined in the Court of King's Bench.

XXXIX. AND BE IT FURTHER ENACTED by the authority aforesaid, that if any Governor-General, President, or Governor or Council of any of the said Company's principal or other settlements in *India*, or the Chief Justice, or any of the Judges of the said Supreme Court of Judicature, to be by the said new charter established, or of any other Court in any of the said United Company's settlements, or any other person or persons who now are, or heretofore have been, employed by, or in the service of, the said United Company, in any civil or military station, office, or capacity, or who have, or claim, or heretofore have had, or claimed, any power or authority, or jurisdiction, by or from the said United Company, or any of his Majesty's subjects residing in *India*, shall commit any offence against this act, or shall have been, or shall be guilty of any crime, misdemeanour, or offence, committed against any of His Majesty's subjects, or any of the inhabitants of *India*, within their respective jurisdictions, all such crimes, offences, and misdemeanours, may be respectively inquired of, heard, tried, and determined, in His Majesty's Court of *King's Bench*; and all such persons so offending, and not having been before tried for the same offence in *India*, shall, on conviction in any such case, as is not especially provided for by this act, be liable to such fine or corporal punishment, as the said Court shall think fit; and, moreover, shall be liable, at the discretion of the said Court, to be adjudged to be incapable of serving the said United Company, in any office, civil or military; and all and every such crimes, offences and misdemeanours as aforesaid, may be alleged to be committed, and may be laid, enquired of, and tried in the county of *Middlesex*.

Punishment on conviction.

Venue may be laid in Middlesex.

Where Indictments or

XL. "AND WHEREAS the provisions made by former "Laws for the hearing and determining in *England*

(1) See note (2) *ante*, 25.

Justices of the Peace in the provinces to have jurisdiction in cases of assault and trespass, committed by British subjects on the natives of India, 53 G. III. c. 155. § 105.—[C.]

" offences committed in *India*, have been found ineffectual, " by reason of the difficulty of proving in this Kingdom mat- " ters done there," be it further enacted, by the authority aforesaid, that in all cases of indictments or informations, laid or exhibited in the said Court of *King's Bench*, for misdemeanours or offences committed in *India*, it shall and may be lawful for his Majesty's said Court, upon motion to be made on behalf of the prosecutor, or of the defendant or defendants, to award a writ or writs of *Mandamus*, (1) requiring the Chief Justice and Judges of the said Supreme Court of Judicature for the time being, or the Judges of the Mayor's Court at *Madras*, *Bombay*, or *Bencoolen*, as the case may require, who are hereby respectively authorised and required accordingly, to hold a Court, (2) with all convenient speed, for the examination of witnesses, and receiving other proofs concerning the matters charged in such indictments or informations respectively; and, in the mean time, to cause such public notice to be given of the holding the said Court, and to issue such summons or other process, as may be requisite for the attendance of witnesses, and of the agents, or counsel of all or any of the parties respectively, and to adjourn, from time to time, as occasion may require; and such examination, as aforesaid, shall be then and there openly and publicly taken *viva voce* in the said Court, upon the respective oaths of witnesses, and the oaths of skilful interpreters, administered according to the forms of their several religions; and shall, by some sworn officer of such Court, be reduced into one or more writing or writings on parchment, in case any duplicate or duplicates should be required by or on behalf of any of the parties interested, and shall be sent to His Majesty in his Court of *King's Bench*, closed up, and under the seals of two or more of

informations laid in the King's Bench.

Mandamus may issue, requiring Judges of Supreme Court to examine witnesses and receive evidence, &c.

Proceedings thereon,

to be returned to King's Bench under seals of two or more Judges.

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(1) See 24 G. III. c. 25. §§ 78, 81. and 42 G. III. c. 85. §§ 1, 2, as to the practice of granting these writs in England. In cases of informations and indictments, see the King v. Jones, 8 East 31. The K. B. has awarded this writ before issue joined, Spalding *v.* Mure, T. 35 G. III. cited in Tidd, 843, 7th Edit. Impey C. P. 415. Willis Interrog. 30.—[C.]

(2) For the form of proceeding, see Smoult's collection of orders, 184, 185, 207.

the judges of the said Court, and one or more of the said judges shall deliver the same to the agent or agents of the party or parties requiring the same; which said agent or agents, (or in case of his or their death, the person into whose hands the same shall come,) shall deliver the same to one of the Clerks in Court of his Majesty's Court of *King's Bench*, in the public office, and make oath that he received the same from the hands of one or more of the judges of such Court, in *India*, (or, if such agent be dead, in what manner the same came into his hands); and that the same has not been opened or altered since he so received it; (which said oath such Clerk in Court is hereby authorized and required to administer;) and such depositions being duly taken and returned, according to the true intent and meaning of this act, shall be allowed and read, and shall be deemed as good and competent evidence, as if such witness had been present, and sworn and examined *viva voce*, at any trial, for such crimes or misdemeanours as aforesaid, in his Majesty's said Court of *King's Bench*, any law or usage to the contrary notwithstanding; and all parties concerned shall be entitled to take copies of such depositions at his own costs and charges.

And shall be good evidence.

In case of offences against this act, &c., committed by the Chief Justice or Judges.

XLI. AND BE IT FURTHER ENACTED, by the authority aforesaid, that in case the said Chief Justice, or Judges of the said Supreme Court of Judicature, or any of them, for the time being, shall commit any offence against this act, or be guilty of any corrupt practice, or other crime, offence, or misdemeanour, in the execution of their respective offices, it shall and may be lawful for his Majesty's said Court of *King's Bench in England*, upon an information or indictment laid or exhibited in the said Court, for such crime, offence, or misdemeanour, upon motion to be made in the said Court, to award such writ or writs of Mandamus as aforesaid, requiring the Governor-General and Council of the said United Company's settlement, at Fort William aforesaid, who are hereby respectively authorised and required accordingly, to assemble themselves, in a reasonable time, and to cause all such proceedings to be had and made, as are herein before respectively directed and prescribed, concerning the examination of witnesses; and such examination, so taken, shall be

Mandamus to be awarded to Governor-General and Council, &c.

returned, and proceeded upon in the same manner, in all respects, as if the several directions, hereinbefore prescribed and enacted in that behalf, were again repeated.

XLII. AND BE IT FURTHER ENACTED, by the authority aforesaid, that in all cases of proceedings in Parliament, touching any offences against this act, or any other offences committed in *India*, it shall and may be lawful for the Lord High Chancellor, or Speaker of the House of Lords, and also for the speaker of the House of Commons for the time being, in like manner, to issue his or their warrant or warrants to the Governor-General and Council of the said United Company's presidencies of Fort William, and to the Chief Justice and Judges of the said Supreme Court of Judicature, or the Judges of the Mayor's Court at *Madras*, *Bombay* or *Bencoolen*, as the case may require, for the examination of witnesses; and such examination shall be returned to the said Lord High Chancellor or Speaker of the House of Lords, or to the Speaker of the House of Commons respectively, and proceeded upon in the same manner, in all respects, as if the several directions, hereinbefore prescribed and enacted in that behalf, were again particularly repeated; and every such examination, returned either to the Lord Chancellor, or Speaker of the House of Lords, or to the Speaker of the House of Commons, as aforesaid, shall be deemed good and competent evidence, and shall be allowed and read in both Houses of Parliament, or either of them respectively, as occasion may require, any law or usage to the contrary notwithstanding.

In all proceedings in Parliament as to offences in India, Chancellor, or Speakers, may, in like manner, issue warrants for the examination of witnesses in India, which shall be proceeded upon in same manner as hereinbefore prescribed, and be good evidence in both Houses of Parliament.

XLIV. "AND WHEREAS His Majesty's subjects are "liable to be defeated of their several rights, titles, debts, "dues, demands, or suits, for which they have cause aris-"ing in *India* against other subjects of His Majesty;" Now, for preventing such failure of justice, be it further enacted by the authority aforesaid, that when, as often as the said United Company, or any person or persons whatsoever, shall commence and prosecute any action or suit, in law or equity, for which cause hath arisen, or shall hereafter arise, in *India*, against any other person or persons whatsoever, in any of His Majesty's Courts at

In all actions or suits in Law or Equity, commenced by the Company or other party, the Court may issue Mandamus to the Courts in India to take examination of witnesses, and

Westminster, it shall and may be lawful for such Courts respectively, upon motion there to be made, to provide and award such writ or writs, in the nature of a *mandamus*, or commission, as aforesaid, to the Chief Justice and Judges of the said Supreme Court of Judicature, for the time being, or the Judges of the Mayor's Court at *Madras*, *Bombay*, and *Bencoolen*, as the case may require, for the examination of witnesses as aforesaid; and such examination, being duly returned, shall be allowed and read, and shall be deemed good and competent evidence, at any trial or hearing between the parties in such cause or action, in the same manner, in all respects, as if the several directions hereinbefore prescribed and enacted in that behalf, were again repeated. (1)

the same to be good evidence.

No such depositions returned, to be allowed as evidence, in any capital cases but those proceeded against in Parliament.

XLV. PROVIDED NEVERTHELESS, AND BE IT ENACTED, that no such depositions, taken and returned as aforesaid, by the virture of this act, shall be allowed or permitted to be given in evidence in any capital cases, other than such as shall be proceeded against in Parliament, any thing in this act contained to the contrary notwithstanding.

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(1) By the 1 W. 4, c. 22, the provisions of these Sections are extended to all the Colonies; and in Bain *v.* DeVetry, 3 Dowl. 516, it was decided, that the Court of Queen's Bench had power to issue a *mandamus* to examine a witness in India, wheresoever the cause of action may have arisen. See also Davison *v.* Nichol, 1 Dowl. 220. Savage *v.* Binny, 2. Dowl. 643. Doe dem. Crimes *v.* Pattison, 3 Dowl., 35.—*Wordsworth's Rules of Court, liii.*

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" *An* Act *to explain and amend so much of an Act, made*
" *in the thirteenth year of the reign of his present*
" *Majesty, intituled* " An Act for establishing certain
" Regulations for the better management of the affairs
" of the *East-India* Company, as well in *India* as in *Eu-*
" *rope,*" *as relates to the administration of justice in*
" *Bengal; and for the relief of certain persons im-*
" *prisoned at Calcutta in Bengal, under a judgment*
" *of the Supreme Court of Judicature; and also for*
" *indemnifying the Governor-General and Council*
" *of Bengal, and all officers who have acted under*
" *their orders or authority, in the undue resistance*
" *made to the process of the Supreme Court.*"

[1781.]

WHEREAS, in virtue of an Act, passed *in the* " *thirteenth* year of his present Majesty's reign, intituled " *An Act for establishing certain Regulations, for the* " *better management of the affairs of the* East-India " *Company, as well in* India *as in* Europe." His " Majesty, *by his Royal letters-patent, of the twenty-* " *sixth day of March, in the fourteenth year of his* " *reign,* did create and constitute a Court of Record, to " be within the factory of Fort William, at Calcutta in " Bengal, called the Supreme Court of Judicature, at " Fort William in Bengal, with sundry directions, " powers and authorities to the said Court, in the said " letters-patent set forth and expressed; and whereas " many doubts and difficulties having arisen, concern- " ing the true intent and meaning of certain clauses and " provisions in the said act, and letters patent, and, " by reason thereof, dissension hath arisen, between the " Judges of the Supreme Court and the Governor-General

Recites 13 Geo. III. c. 63.

and Charter,

" and Council of Bengal; and the minds of many inhabi-
" tants, subject to the said Government, have been dis-
" quieted with fears and apprehensions; and further mis-
" chiefs may possibly ensue from the said misunderstand-
" ings and discontents, if a seasonable and suitable reme-
" dy be not provided. And whereas it is expedient, that
" the lawful government of the provinces of *Bengal, Behar,*
" and *Orissa,* should be supported, that the Revenues
" thereof should be collected with certainty, and that the
" inhabitants should be maintained and protected in the
" enjoyment of all their ancient laws, usages, rights and
" privilegs; May it therefore please your Majesty, that it
may be enacted, and be it enacted, by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons, in this present Parliament assembled, and by the authority of the same, that the Governor-General and Council of Bengal shall not be subject, jointly or severally, to the jurisdiction of the Supreme Court of Fort William in *Bengal,* for, or by reason of, any act or order, or any other matter or thing whatsoever, counselled, ordered, or done by them, in their public capacity only, and acting as Governor-General and Council.

The Governor-General and Council, not to be subject to the Supreme Court.

II. AND IT IS HEREBY ENACTED AND DECLARED, that if any person or persons, shall be impleaded (1) in any action or process, civil or criminal, in the said Supreme Court, for any act or acts done by the order of the said Governor-General and Council, in writing, he or they may plead the general issue, and give the said order in evidence; which said order, with proof that the act or acts done, has or have been done according to the purport of the same, shall amount to a sufficient justification of the said acts, and the defendant shall be fully justified, acquitted, and discharged, from all and every suit, action and process whatsoever, civil or criminal, in the said Court.

Persons impleaded in the Supreme Court, for acts done by order of the Governor-General and Council, may plead the general issue.

(1) This clause is omitted in the 39 & 40 of G. III. c. 79, § 3, which relates to Madras, and in the 4 G. IV. c. 71. § 7, which respects Bombay.—[C.]

III. PROVIDED ALWAYS, that, with respect to such order or orders, of the said Governor-General and Council, as do or shall extend to any British subject or subjects, the said Court shall have and retain as full and competent jurisdiction, as if this act had never been made.

The Court to have jurisdiction where the order extends to British subjects.

IV. PROVIDED ALSO, that nothing herein contained, shall extend, or be construed to extend, to discharge or acquit the said Governor-General and Council, jointly or severally, or any other person or persons acting by or under their orders, from any complaint, suit or process, before any competent Court in this kingdom, or to give any other authority whatsoever to their acts, than acts of the same nature and description had, by the laws and statutes of this kingdom, before this act was made.

Proviso, as to liability to be impleaded in courts in England, &c.

V. (1) And in order to prevent all abuse of the powers given to the Governor-General and Council, be it further enacted, that in case any person, by himself or his Attorney or Counsel, shall make a complaint to the Supreme Court, and enter the same in writing, and upon oath, of any oppression or injury, charging the same to be committed by the said Governor-General, or any member or members of the Council, or any other person or persons, by or in virtue of any order given by the said Governor-General and Council, and shall execute a bond with some other person, whom the said Court shall deem responsible, jointly and severally, to the United East India Company, in such a penalty as the Court shall appoint, effectually to prosecute the said complaint by indictment, information, or action, in some competent Court in *Great Britain*, within two years of the making of the same, or the return into Great Britain of the party or parties against whom the same is made; that then, and in such case, the party complaining shall be, and is hereby, enabled to compel, by order of the Court, the production in the said Supreme Court, of a true copy or copies of the order or orders of

If any person, making complaint to the Supreme Court, against any order of, the Governor-General and Council, shall execute a bond to the Company, to prosecute the same in some competent Court in Great Britain, &c., such person may compel, by order of Court, the production of copy of the order complained of, &c.

(1) This clause is omitted in the 37 G. III. c. 142, by which the Mayor's Courts were established at Madras and Bombay, and also in the 39 & 40 G. III. c. 79; and 4 G. IV. c. 71; but query whether the remedy is not given by § 17. of the latter act?—[C]

Council complained of, and to have the same authenticated by the Court, and to examine witnesses upon the matter of the said complaint, and also on the part of the person or persons complained of; and the said parties, as well complaining as complained of, shall have and enjoy, severally, all manner of advantages, rights and privileges, relative to proof of the said complaint or defence, and also relative to any mandamus or commission, to be issued by any of his Majesty's Courts in Westminsterhall, in case the Court, upon motion, shall think fit to issue the same, as are provided in the case of any suit in such cases, by an act of the thirteenth year of his Majesty's reign, entituled "An act for establishing certain Regulations for the "better management of the affairs of the East India Com-"pany, as well in *India* as in *Europe*;" and the Supreme Court, shall have the same powers for the compelling witnesses to appear and be examined, and the same rules and directions shall be observed for the transmitting the depositions of witnesses and other papers to this kingdom, as are provided by the said recited act.

And evidence to be taken, &c. as provided by 13 G. 3. c. 63.

VI. AND BE IT FURTHER ENACTED, that all copies, so authenticated, of orders of the said Governor-General and Council, and also the depositions which shall have been taken in manner aforesaid, before the Supreme Court, shall be received in evidence in any of his Majesty's Courts of law or equity at *Westminster*.

Authenticated copies of orders and depositions, shall be received in the Courts at Westminster.

VII AND BE IT FURTHER ENACTED, that no prosecution or suit shall be carried on, against the said Governor-General, or any Member of the Council, before any Court in *Great Britain*, (the High Court of Parliament only excepted,) unless the same shall be commenced within five years after the offence committed, or within five years after his arrival in *England*.

Limitation of action against Governor-General and Council.

VIII. AND BE IT FURTHER ENACTED, that the said Supreme Court, shall not have or exercise any jurisdiction in any matter concerning the revenue, or concerning any act or acts ordered or done in the collection thereof, according to the usage and practice of the country, or the regulations of the Governor-General and Council.

Supreme Court not to have any jurisdiction in any matter concerning the revenue.

IX. And for removing all doubts concerning the persons, subject to the jurisdiction of the said Superme Court, be it enacted, that no person shall be subject to the jurisdiction of the Supreme Court, for or by reason of his being a land-owner, land-holder, or farmer of land or of land-rent, or for receiving a payment or pension in lieu of any title to, or ancient possession of, land or land-rent, or for receiving any compensation or share of profits for collecting or rents payable to the public out of such lands or districts as are actually farmed by himself, or those who are his under-tenants, in virtue of his farm, or for exercising within the said lands and farms any ordinary or local authority commonly annexed to the possession or farm thereof, within the provinces of *Bengal, Behar* and *Orissa*, or for or by reason of his becoming security for the payment of the rents reserved or otherwise payable out of any lands or farms, or farms of land, within the provinces of *Bengal, Behar*, and *Orissa*.

No person shall be subject to the jurisdiction of the Court, on account of his being a land-holder, or farmer of land, &c.

X. AND BE IT FURTHER ENACTED, that no person, for or by reason of his being employed by the Company, or the Governor General and Council, or by any person deriving authority under them, or for, or on account of, his being employed by a native, or a descendant of a native of Great Britain, shall become subject to the jurisdiction of the Supreme Court, in any matter of inheritance or succession to lands or goods, or in any matter of dealing or contract between party or parties, except in actions for wrongs or trespasses, and also except in any civil suit, by agreement of parties in writing, to submit the same to the decision of the said Court. (1)

Nor for being employed by the Company, &c.

Except in actions of trespass, or by agreement between the parties.

XI. And for the more perfectly ascertaining those of the natives, who shall be subject to the jurisdiction of the Supreme Court, on account of their being employed by any of his Majesty's British subjects, be it enacted, that on or before the first day of January, one thousand seven hundred and eighty-three, the Governor General and

The name, discription, and place of abode, of every native employed in the service of the Company, in any judicial

(1) Omitted in the 37 G. III., c. 142, and in the 39 & 40 G. III., c. 79., and in 4 G. IV., c. 71, which relate to Madras and Bombay; but see § 17, latter act.—[C.]

And see Charter § 13, *ante*, 9. 11.

office, &c., shall be entered in a book.

Council shall cause the name, description, and place of usual abode, of all and every native employed in the service of the East India Company in any judicial office, or as principal native officer of any district, in the collection of revenue, or in any commercial concerns of the Company, (except as herein before excepted) to be entered in a book or books alphabetically disposed, distinguishing the district in which the said officers are employed, of which book or books two copies shall be made, one of which shall remain in the provincial office, and the other of which shall be registered in the Supreme Court; and the Governor-General and Council are hereby required, to register, or cause to be registered, the name of every person who shall afterwards be appointed to succeed to any office vacant, or new created, within three months of the said appointment or creation.

On the death or removal of any person employed by the Company, his name shall be entered in a book.

XII. AND BE IT FURTHER ENACTED, that whenever any person or persons shall happen to die, or shall be removed from any judicial office or employment whatsoever, in the service of the East-India Company, the name or names of such person or persons, so dying or removed, as aforesaid, shall be entered in a book or books for that purpose, to be kept in the manner aforesaid.

All British subjects shall enter, in the provincial office, the name and place of abode of their native stewards, agents, &c.

XIII. AND IT IS HEREBY FURTHER ENACTED, that all and every of his Majesty's Britsh subjects shall, in like manner, cause to be entered in the provincial office of the district in which the said British subject doth most commonly reside, the name, description, and place of abode, of his native steward or stewards, agent or agents, or partner or partners, in any concern of revenue or merchandize, (if any such steward, agent or partner he hath,) and in like manner shall enter, or cause to be entered, within three months from the time of succession or new appointment, or new partnership, the names of him or them who are dismissed, dead or new appointed, in the said provincial office; and the president of the said Council, is directed to transmit, within three months, to Calcutta, the name of every person who shall succeed to the said employment or partnership, for which a fee of one sicca rupee for every entry, and no more, shall be paid to the officer keeping the said register.

And all casualties, &c.

XIV. AND BE IT FURTHER ENACTED, that if any British subject shall be convicted, before the Supreme Court, of employing any native agent, or engaging with any native partner, not registered as herein before is provided, or who shall be *bonâ fide*, and in effect and substance such agent or partner (although by covin, collusion or deceit, the same may be covered and concealed, contrary to the true intent and meaning of this act), the said British subject, if in the Company's service, shall forfeit, on conviction, the sum of five hundred pounds, and if not in the Company's service, shall forfeit one hundred pounds to any person suing for the same.

Penalty on British subjects employing or engaging any native agent, or partner, not so registered.

XV. AND IT IS HEREBY FURTHER ENACTED, that no native shall, after the first day of January, one thousand seven hundred and eighty three, be entitled to receive any fee or salary, except from the day of the date of his registry.

No native entitled to any salary before he is registered.

XVI. AND BE IT FURTHER ENACTED, that if any British European subject shall engage in any concern of *trade*, with a native partner, not registered, as herein directed, the said British subject shall not be entitled to recover or receive any sum or sums of money by reason of the said joint concern, or to compel an account thereof by any suit in law or equity, in any Court within the said provinces; And any person prosecuting to conviction, in the Supreme Court, a British subject having a native partner or agent, not being registered, as aforesaid, shall be entitled to, and shall receive, by due process of the said Court, the whole of the salary engaged for, and shall also be entitled to an account and receipt of the said British subject's share of profit of any partnership entered into with any person or persons not conforming to the regulations of this act.

British subjects engaging *in trade* with native partners, not registered, not entitled to benefit thereof.

And any person prosecuting to conviction, entitled to all salary and profit of share.

XVII. PROVIDED ALWAYS, AND BE IT ENACTED, that the Supreme Court of Judicature, at Fort William in Bengal, shall have full power and authority, to hear and determine, in such manner as is provided for that purpose, in the said charter or letters patent, all and all manner of actions and suits against all and singular, the inhabitants of the said city of Calcutta; Provided that their inheritance and succession to lands, rents, and goods, and all

Supreme Court to have jurisdiction in all actions against the inhabitants of Calcutta:

Proviso that inheritance and succession, contracts and dealings between

Mahomedans, be determined by their laws; Gentoos by their laws.

When only one Mahomedan, or Gentoo, by the laws of defendant.

matters of contract and dealing between party and party, shall be determined, in the case of Mahomedans, by the laws and usages of Mahomedans, and in the case of Gentoos, by the laws and usages of Gentoos; and where only one of the parties shall be a Mahomedan, or Gentoo, by the laws and usages of the defendant. (1)

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(1) It seems questionable, whether this section gave the Court any further power over those who were actually *resident* within the local limits of the Court, than it before possessed, under the Charter; indeed, in some respects it is, perhaps, to be considered, as restrictive of the powers of the Court, obliging it to decide in certain cases according to the laws and usages of Hindoos or Mahomedans. It has long been a received opinion, that British law was first introduced within the local limits of the town of Calcutta, by the Charter, 13 G. I, establishing the first Mayor's Court in 1726. By that Charter, the Court is authorised, "To try, hear, and determine, all civil suits, actions and pleas, "between party and party, that shall or may arise or happen, or that have "already arisen or happened, within the said town or factory of *Calcutta*, "at *Fort William* in *Bengal*, or within any of the factories subject or "subordinate;" and by a subsequent clause, it is directed, "That, upon com-"plaint to be made in writing, to the said Mayor's Court, by any person or per-"sons, against any other person or persons whatsoever, then residing or "being, or who, at the time when such cause of action did or shall accrue, did "or shall reside, or be within the said town of *Calcutta*, at Fort William "in *Bengal*, or the precincts, districts or territories thereof, of any of the "causes of suit aforesaid, already accrued, or which shall or may hereafter "accrue, the said Court, shall and may issue a summons in writing," &c.

It should be observed, that in this Charter, there is no exemption from the jurisdiction of the Court, of any persons *resident* in Calcutta; according, therefore, to the rule recognized in the case of Campbell *v.* Hall, by Lord Mansfield, State Trials, vol. 20, p. 320, all persons and all property within the limits of the town of Calcutta, would be subject to British law.

This Charter was surrendered, and another, the 26 G. 2, granted in 1753. The jurisdiction is the same as that given by the first Charter, unless the suit or action shall be between *Indian natives only*; or unless the cause of suit shall not exceed five pagodas. In the first case, unless by the *consent* of both parties, the Mayor's Court had no jurisdiction; in the latter, the parties must have sued in the Court of Requests; still, the criminal jurisdiction of the Commissioners of Oyer and Terminer, extended to all offenders and offences committed within Calcutta, or any of the factories or places subordinate thereto.

The Act of the 13 G. 3, c. 63, which abolished the Mayor's Court, and the Charter of 1774, establishing the Supreme Court, contain no exception as to *the Indian natives of Calcutta* in civil cases, and expressly give the Court a criminal jurisdiction over all offences committed within the limits of Calcutta. The jurisdiction, therefore, of the Supreme Court, would extend to all persons within the limits of the Supreme Court, and they would, prior to the 21 G. 3, be subject to British law.

In this Statute, the 21 G. 3, c. 70, the words, *inhabitants of the city of Calcutta*, are, for the first time, mentioned, and this Statute must be construed, not as

XVIII. AND IN ORDER, that regard should be had to the civil and religious usages of the said natives; Be it enacted, that the rights and authorities of fathers of families, and masters of families, according as the same might have been exercised by the Gentoo or Mahomedan law, shall be preserved to them respectively, within their said families; nor shall any acts done in consequence of the rule and law of caste, respecting the members of the said

The rights and authority of fathers and masters of families, among the natives, preserved to them.

Acts by law of caste in families, not to be held criminal.

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giving the Court, for the first time, jurisdiction over the *inhabitants of Calcutta*, but, as providing that they shall not, when one of the defendants is a Hindoo or Mahomedan, be subject to British law, in questions of succession to lands, rents, and goods, and in matters of contract.

Of the jurisdiction of this Court, over the inhabitants of Calcutta, under the Charter, and prior to the passing of this Act, Sir Elijah Impey thus speaks:—"The state of the inhabitants of Calcutta was, in every particular, different. "They were, as compared to the inhabitants of the provinces, a very inconsi-"derable number, inhabiting a narrow district, and that district an English "town and settlement; not governed by their own laws, but by those of Eng-"land, long since there established; where there were no Courts of Criminal "Justice, but those of the King of England, which administered his laws to the "extent, and in the form and manner, in which they are administered in Eng-"land. The inhabitants had resorted to the English flag, and enjoyed the pro-"tection of the English law; they chose those laws in preference to their own—"they were become accustomed to them. The town was part of the dominion of "the Crown by unequivocal right, originally by cession, founded on compact,—"afterwards by capture and conquest. Their submission was voluntary, and "if they disliked the laws, they had only to cross a ditch, and were no longer "subject to them. The state of an inhabitant in the provinces at large, was "that of a man inhabiting his own country, subject to its own laws. The state of "an Hindoo, a native of the provinces, inhabiting Calcutta, which in effect was "an English town, to all intents and purposes, did not differ from that of any "other foreigner, from whatsoever country he might have migrated; he par-"took of the protection of the laws, and in return owed them obedience."

The opinion of Puller, C. J., in Rex. *v.* Goculnauth Mullick, and another, see Appendix, title, *Jurisdiction*, is to the same effect; he states:—"By the 21 "G. 3, c. 70, the jurisdiction of the Court was not extended; this was merely "a *declaratory act*, and though it did not narrow the jurisdiction in reality, it "corrected an erroneous construction, which had been put on the previous "Acts of Parliament, by which the jurisdiction had been enlarged beyond "what was the intention of the legislature."

In the case of Tunsook Roy *v.* Mobarruck Ally, 15th June, 1835, see Appendix, an opinion in some respects similar, was expressed by Ryan, C. J., in delivering the judgment of the Court. Still, however, there appears good ground for supposing, that this Statute gave rise to many of the cases of *constructive inhabitancy*. See Sir Charles Grey's minute, Appendix to Report, on the affairs of the East India Company, No. 5, on Legislative Councils, &c. p. 59.

families only, be held and adjudged a crime, although the same may not be held justifiable by the laws of England. (1)

Court to frame such forms of process, &c., in suits, civil or criminal, against the natives, as shall suit their religion and manners.

XIX. AND BE IT FURTHER ENACTED, that it shall and may be lawful for the Supreme Court of Judicature, at Fort William in Bengal, to frame such process, and make such rules and orders for the execution thereof, in suits, civil or criminal, against the natives of *Bengal, Behar* and *Orissa,* as may accommodate the same to the religion and manners of such natives, so far as the same may consist with the due execution of the laws, and attainment of justice.

Such forms to be transmitted to one of the Secretaries of State, for his Majesty's approbation.

XX. PROVIDED ALWAYS, and be it enacted, that such new forms of process, and rules and orders for the execution thereof, shall be forthwith transmitted to one of his Majesty's principal Secretaries of State, to be laid before his Majesty, for his royal approbation, correction or refusal; and such process shall be used, and such rules and orders observed, until the same shall be repealed or varied, and in the last case, with such variations, as shall be made therein.

The Governor-General and Council may determine on appeals from country Courts, and be deemed a Court of Record.

XXI. " AND WHEREAS, the Governor-General and " Council, or some committee thereof, or appointed there- " by, do determine on appeals and references from the " country, or provincial courts, in civil causes;" Be it further enacted, that the said Court shall, and always may, hold all such pleas and appeals, in the manner and with such powers as it hitherto hath held the same, and shall be deemed in law a Court of Record, and the judgments, therein given shall be final and conclusive, except upon appeal to his Majesty in civil suits only, the value of which shall be five thousand pounds and upwards. (2)

Appeal allowed to his Majesty where value 5,000£.

And shall determine offences

XXII. AND IT IS HEREBY FURTHER ENACTED, that the Court aforesaid, shall and is hereby declared to be a

(1) Extended to Madras and Bombay, by 37. G. III. c. 142. § 12.—[C.]

(2) But see in Appendix, copy of Her Majesty's order in Council, dated 10th April, 1838, *ante* (35) *note* (2) in which it is ordered, that the limitation to 5,000£ shall cease, and appeals to be allowed in cases when the value of the matter in dispute amounts to 10,000 Rs. or upwards.

Court to hear and determine on all offences, abuses and extortions, committed in the collection of revenue, or of severities used beyond what shall appear to the said Court customary or necessary to the case, and to punish the same according to sound discretion, provided the said punishment does not extend to death, or maiming, or perpetual imprisonment.

committed in collecting the Revenue, &c.

XXIII. AND IT IS HEREBY ENACTED, that the Governor-General and Council, shall have power and authority, from time to time, to frame regulations (1) for the provincial courts and councils, and shall, within six months after making the said regulations, transmit, or cause to be transmitted, copies of all the said regulations to the Court of Directors, and to one of his Majesty's principal Secretaries of State; which regulations his Majesty in Council may disallow or amend; and the said regulations, if not disallowed within two years, shall be of force and authority to direct the said provincial courts, according to the tenor of the said amendment, provided the same do not produce any new expense to the suitors in the said Courts.

Governor-General & Council may frame regulations, for the provincial Courts & Councils.

XXIV. "AND WHEREAS, it is reasonable to render "the Provincial Magistrates, as well Natives as British "subjects, more safe in the execution of their office;" Be it enacted, that no action for wrong or injury shall lie in the Supreme Court, against any person whatsoever, exercising a judicial office *in the country courts*, for any judgment, decree, or order of the said Court, nor against any person for any act done by, or in virtue of the order of the said Court. (2)

Judicial officers in the country Courts, not liable to actions for wrong, &c. in Supreme Court, for any judgment or order of their Courts.

Nor any person for act done by order thereof.

XXV. AND BE IT FURTHER ENACTED, that in case of an information intended to be brought or moved for, against any such Officer or Magistrate, for any corrupt act or acts, no rule or other process shall be made or issued thereon, until notice be given to the said Maigistrate or

No rule or process to be made or issued on information against any such officer or

(1) See 13 G. 3, c. 63. § 36. and *ante* (51) *note* (1).

(2) See the case of Hossain Ally *v.* William Andrew Chalmer and John Malcolm Mackie, in March 1824, and also Calder *v* Halket, in 1835, Appendix, title, *Jurisdiction*.

magistrate, until due notice has been given to him.

Officer, or left at his usual place of abode, in writing, signed by the party or his Attorney, one month, if the person exercising such office shall reside within fifty miles of Calcutta, two months, if he shall reside beyond fifty miles, and three months, if he shall reside beyond one hundred miles from Calcutta, before the suing out or serving the same, in which notice the cause of complaint shall be fully and explicitly contained; nor shall any verdict be given against such Magistrate, until it be proved on trial that such notice hath been given; and in default of such proof, a verdict, with costs, shall be given for the defendant.

Nor any verdict against such Magistrate until notice proved.

No such Magistrate liable to arrest, &c., until he shall have declined to appear after notice.

XXVI. AND BE IT FURTHER ENACTED, that no Magistrate shall be liable, in any such case, to any personal caption or arrest, nor shall be obliged to put in bail, until he shall have declined to appear to answer, after notice given, as directed by this act, and service of the process, directing his appearance, by himself or his Attorney.

An Act *for the further regulation of the trial of* " *persons, accused of certain offences committed in* " *the* East Indies ; *for repealing so much of an Act,* " *made in the twenty-fourth year of the reign of his* " *present Majesty, intituled,* " An Act for the better " regulation and management of the affairs of the *East-* " *India* Company, and of the *British* possessions in " *India,* and for establishing a Court of Judicature for " the more speedy and effectual trial of persons accused " of offences committed in the *East Indies,*" *as re-* " *quires the Servants of the* East-India *Company to* " *deliver inventories of their Estates and Effects ; for* " *rendering the laws more effectual against persons* " *unlawfully resorting to the* East Indies ; *and for* " *the more easy proof, in certain cases, of deeds and* " *writings executed in* Great Britain *or* India."

[1786.]

SEC. XXVII. AND BE IT FURTHER ENACTED, that if it shall, at any time, be made to appear, to the satisfaction of the said Court of Exchequer in *England,* at the instance of his Majesty's Attorney-General, or other prosecutor, by motion in the said Court, on his or their behalf, that such party or parties, principal or principals, or sureties, as aforesaid, or any of them, have no lands, tenements, or other estate or effects in *Great Britain,* or that the same (if any) are not sufficient to answer the sum or sums forfeited by such recognizance or recognizances, or due for such fine or fines respectively, and that such party or parties, principal or principals, or sureties, or any of them, shall have, or be seized or possessed of, or entitled to, any lands, tenements or hereditaments, goods, chattels, debts, estate or effects, within any of the British posses-

Mode of recovering fines, from property in the East Indies, of parties against whom any information for extortion or other misdemeanor, may have been exhibited in the Exchequer, by his Majesty's Attorney-General, or other prosecutor, and who shall be adjudged to pay a fine to his Majesty, when the effects in Great Britain are insufficient.

sions in the *East Indies*, respectively, (the said sum or sums, fine or fines, not being paid and satisfied,) then, and in every such case, the said Court of Exchequer shall, and may, by rule or order, of the said Court, cause one or more transcript or transcripts of the estreats of the said recognizance or recognizances, fine or fines, to be sealed with the seal of the said Court, or to be otherwise attested, as the said Court shall direct, and the same so sealed or attested, shall be closed up, under the seals of any two of the Barons of the said Court, directed to the Supreme Court of Judicature in *Bengal*, and to the Mayor's Courts of *Madras* and *Bombay*, or to any or either of the said Courts, as the case shall or may require; and the same shall be delivered by the said Barons, or one of them, to such agent or agents as the prosecutor or prosecutors shall nominate or appoint for that purpose; which agent or agents (or, in the case of his or their death, the person into whose hands the same shall come) shall deliver such transcript or transcripts to one of the Judges of the said Supreme Court or Mayor's Courts, respectively, as the case may be or require, and make oath, that he or they did receive the same from the hands of one of the said Barons, (or in what other manner the same came into his or their hands,) and that the same hath not, or have not, been opened or altered since he or they so respectively received the same, (which oath any of the said Judges of any of the said Courts in *India*, are hereby authorised and required to administer ;) and thereupon such transcript or transcripts shall be filed and recorded in such of the said Courts in *India*, to which the same shall be so directed, as the case may require ; and upon motion to be made in such Court or Courts for that purpose, for and on the behalf of such prosecutor or prosecutors, the like process and proceedings shall and may, from time to time, be awarded and had, by and in the said Supreme Court of Judicature, and the said Mayor's Courts at *Madras* and *Bombay*, respectively, or any or either of them, against the lands, tenements, or hereditaments, goods, chattels, debts, estate and effects of the said party or parties, principal or principals, and sureties within the limits of the jurisdictions of such respective Courts in the *East Indies*, as might or could have

been awarded or had in the said Court of Exchequer in *England*, against the lands, tenements, hereditaments, goods, chattels, debts, estate and effects of the same party or parties, principal or principals, or sureties, in *England*, and the same shall be valid and effectual, any law, usage, or custom to the contrary notwithstanding.

XXIX. AND BE IT FURTHER ENACTED, that as well the servants of the United Company, as all other of his Majesty's subjects resident or to be resident in *India*, shall be, and are hereby declared to be, amenable to the Courts of Oyer and Terminer and Gaol Delivery, and Courts of General or Quarter Sessions of the Peace, in any of the British Settlements in *India*, for all murders, felonies, homicides, manslaughters, burglaries, rapes of women, perjuries, confederacies, riots, routes, retainings, oppressions, trespasses, wrongs, and other misdemeanors, offences and injuries whatsoever, by them done, committed, or perpetrated, or to be by them hereafter done, committed, or perpetrated, in any of the countries or parts of *Asia*, *Africa*, or *America*, beyond the *Cape of Good Hope*, to the Streights of *Magellan*, within the limits of the exclusive trade of the said United Company, whether the same shall have been done, committed, or perpetrated, or shall hereafter be done, committed, or perpetrated, against any of his Majesty's subjects, or against any other person or persons whatever. (1)

Servants of the Company and all his Majesty's subjects resident in India, amenable to the Courts of Oyer and Terminer and of General or Quarter Sessions,

for all criminal offences, committed in Asia, Africa or America, between Cape of Good Hope and the Streights of Magellan, within the limits of Company's trade.

XXXVIII. "AND WHEREAS, great difficulties, expense, and delay, often arise in giving proof in *Great Britain*, of the execution of bonds, and other deeds and writings, executed and witnessed by persons resident in the *East-Indies*; and the like difficulties, expense, and delay, also arise in giving proof in the *East-Indies*, of the execution of bonds and other deeds and writings, executed and witnessed by persons resident in *Great Britain*;" For remedy thereof, be it enacted, that whenever any bond, or other deed or writing, executed in the *East-Indies*, and attested by any person or persons re-

Bonds, deeds and writings executed in the East Indies, shall be evidence in Great Britain, and contrariwise, on proof of the hand writing of the parties and witnesses.

(1) See Charter, § 19. *ante* 22.—24 G. 3, c. 25. § 44.—33 G. 3, c. 52. § 67.—9 G. 4, c. 74. §§ 56. 127.

sident there, shall be offered in evidence in any of the Courts of justice in *Great Britain*, it shall be sufficient to prove, by one or more credible witness or witnesses, that the name or names subscribed to such bond, deed or writing, purporting to be of the hand or hands writing of the obligor or obligors to such bond, or of the party or parties to such deed or writing, is or are of the proper hand writing or hands writing of such obligor or obligors, party or parties, respectively, and that the name or names set and subscribed, of the witness or witnesses attesting the execution of the same, respectively, is or are of the proper hand or hands writing of the witness or witnesses so attesting the same, and that such witness or witnesses is or are resident in the *East-Indies*; and, in like manner, all Courts of justice in the *East-Indies*, shall admit the like proof of the execution of bonds and other deeds and writings executed in *Great Britain*, and witnessed by any person or persons resident in *Great Britain*; and such proofs shall be deemed and taken to be as valid and sufficient evidence of the due execution of such bonds, and other deeds and writings, as if the witness or witnesses thereto was or were dead.

" *An* Act *for continuing in the* East-India *Company,*
" *for a further term, the possession of the* British *ter-*
" *ritories in* India, *together with their exclusive*
" *trade, under certain limitations ; for establishing*
" *further regulations for the Government of the said*
" *territories, and the better administration of justice*
" *within the same; for appropriating to certain*
" *uses the revenues and profits of the said Company,*
" *and for making provision for the good order and*
" *government of the towns of* Calcutta, Madras *and*
" Bombay;"

[*June* 11, 1793.]

British subjects making any corrupt bargain for giving up or obtaining any office under the Crown, or the Company, a misdemeanor.

SEC. LXVI. AND BE IT FURTHER ENACTED, that the making or entering into, or being a party to any corrupt bargain or contract, for the giving up, or for obtaining, or in any other manner touching or concerning the trust and duty of any office or employment under the Crown, or the said United Company, in the *East-Indies*, by any British subject whomsoever there resident, shall be deemed and taken to be a misdemeanor at law, and shall be proceeded against and prosecuted as such, by virtue of this act.

His Majesty's subjects amenable to Courts of Justice in India and Great Britain for offences committed in the territories of Native Princes.

LXVII. AND BE IT FURTHER ENACTED, that his Majesty's subjects, as well servants of the said United Company as others, shall be, and are hereby, declared to be amenable to all Courts of Justice, both in *India* and *Great Britian*, of competent jurisdiction to try offences committed in *India*, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them done, or to be done or commited, in any of the lands or territories of any Native Prince or State, or against their persons or properties, or the persons or

properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British Government in *India*. (1)

The Company or their officers, or Court of Directors not to discontinue or compound actions or suits, until decree or judgment without the approbation of the Board of Commissioners for affairs of India.

LXVIII. AND BE IT FURTHER ENACTED, that it shall not be lawful for the said United Company, or for any of their officers or servants, or for the Court of Directors of the said Company, to discontinue, stay, or compound, or settle, or agree to any actions or suits, at law or equity, now depending or hereafter to be commenced, before a final decree or judgment shall be obtained or given therein, unless by and with the approbation of the Board of Commissioners for the affairs of India, for that purpose, in writing, first had and obtained; and that all compositions and agreements made, for any of the purposes aforesaid, by the Court of Directors of the said Company, with the approbation of the said Board, shall be valid and effectual in that behalf; any thing herein, or in any other act or acts contained to the contrary notwithstanding. (2)

Company not to release sentences, or judgments of Courts in England or India against Governor-General, &c., or any of their Servants, for debt or penalty, or misdemeanor,

or to restore servants dismissed by such sentence.

LXIX. AND BE IT FURTHER ENACTED, that after sentence or judgment of any Court having competent jurisdiction, whether in *Great Britian* or in *India*, against any Governor-General, Governor, President, Counsellor, or Commander-in-Chief, or against any of the said United Company's servants, civil or military, for any debt or penalty due, or belonging to the said United Company, or for any extortion or other misdemeanor, it shall not be lawful for the said United Company, in any case whatever, to release or compound such sentence or judgment; or to restore any servant or servants of the said Company, who shall have been removed or dismissed from his or their office or employment, for or on account of misbehaviour, by the sentence of any of the said Courts.

Penalty on King's subjects trading to the East Indies under commission,

CXXXVI. AND BE IT FURTHER ENACTED, that no person being a subject of his Majesty, his heirs or successors, of or belonging to *Great Britain*, or any of the islands, colonies, or plantations aforesaid, shall procure,

(1) See 9 G. IV. c. 74. § 56. and see Charter § 19, p. 22, *ante*.
(2) See 13 G. III, c. 63. § 35.—[*C.*]

solicit for, obtain, or act under any commission, authority, or pass from any Foreign Prince, State, or Potentate whatsoever, to sail, go, or trade in or to the said *East-Indies*, or any of the parts aforesaid; and every such person who shall offend therein, shall incur and forfeit, for every offence, five hundred pounds, one half part of which penalty shall belong to such person or persons as shall inform, or sue for the same, and the other half to the said United Company, and if the said United Company shall inform or sue for the same, then the whole of the said penalty shall belong to the said Company.

or authority from foreign Princes.

CXXXVII. AND BE IT FURTHER ENACTED, that it shall not be lawful for any Governor-General, or Governor, or any Member of Council, of the said presidencies in *India*, to be concerned in any trade or traffick whatever, except on account of the said Company, nor for any collector, supervisor, or other person employed or concerned in the collection of the revenues, or the administration of justice, in the provinces of *Bengal, Behar* and *Orissa*, or either of them, or their agents, or servants, or any person or persons in trust for them or any of them, to carry on, or be concerned in, or to have any dealings or transactions, by way of traffick or trade, at any place within any of the provinces in India, or other parts, or to buy any goods and sell the same again, or any part thereof, at the place where he or they bought the same, or at any other place within the same province, or any other such province or country respectively, except on account of the said Company; nor shall it be lawful for any of the Judges of the Supreme Court of Judicature to be concerned in any trade or traffick whatever; nor shall it be lawful for any of his Majesty's subjects in the said provinces to engage, intermeddle, or be in any wise concerned, directly or indirectly, in the inland trade in salt, beetlenut, tobacco, or rice, except on the account of the said Company, or with their permission, on pain of forfeiting all such goods or commodities which they, or any of them, shall so buy and sell again, by way of traffick, or in which any of them shall so trade, and also treble the value thereof, one moiety to the said United Company, and the other moiety to him or them who will sue for the same.

No Governor-General, &c. to be concerned in trade, except on account of the Company.

Nor any Collector or other person employed in the revenue, or administration of justice, &c., to carry on, or be concerned in trade in India except for the Company.

No Judge to be concerned in trade.

No subject of his Majesty in the provinces to be concerned in the inland trade in salt, beetlenut, tobacco, or rice, except with the Company's permission.

Penalties and offences against this act may be sued for and prosecuted in Courts at Westminster, or in King's Court in India.

CXL. AND BE IT FURTHER ENACTED, that all penalties, forfeitures, seizures, causes of seizure, crimes, misdemeanors, and other offences, which shall arise, or be incurred or made under, or shall be committed against this act, shall be sued for, prosecuted, examined, recovered, and adjudged in any of his Majesty's Courts of Record at *Westminster*, or in the Supreme Court of Judicature at Fort William in *Bengal*, or in one of the Mayor's Courts at *Madras* or *Bombay*, respectively, in manner following, (that is to say,)

Pecuniary penalties and forfeitures of ships and goods by action, suit or information,

all such pecuniary penalties, and all forfeitures of ships, vessels, merchandize, and goods, shall and may be sued for, condemned, and recovered by action, bill, suit, or information (1) wherein no essoin, protection, wager of law, or more than one imparlance, shall be granted or allowed; and all such seizures, whether of any person, or of any ships, vessels, merchandizes, and goods, and all causes of such seizure, shall be cognizable in such actions, suits, or prosecutions, as shall bring into question or relate to the lawfulness or regularity of any such seizure; and all such offences as by this act are not made punishable by pecuniary penalties, or by any forfeitures of goods, but by fine or imprisonment, or both, or are hereby created without providing any particular punishment, shall be prosecuted by indictment or *information* as misdemeanors for breach thereof, and shall be punished by fine or imprisonment, or both, at the discretion of the Court in which such prosecution shall, by virtue of this act, be begun and carried on; and if such prosecution for a misdemeanor shall be in any

otherwise by indictment or information as misdemeanors,

and punished by fine and imprisonment.

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(1) The *Swallow* and the *Almorah* are the only ships which have been proceeded against by information under this Act. In the case of the *Swallow* (which was undefended) the proclamations were sent to the *London Gazette;* this was considered unnecessary by Counsel in the case of the Almorah; but the decision of the Court has not been obtained on the point.—[C.]

Query, whether an information under this Act, to recover penalties from an individual ought not to be tried by a jury, and not by the judges, as in the case of a civil action.—[C.]

See the cases of Informations for penalties under the Stamp Regulation, tried by Special Juries in November 1829.

See also Smoult's collection of orders, 218, for proceedings in the case of the *Swallow*. And see Ibid., 134., Forbes qui tam *v.* Day, which was an action of debt for penalties under 13 G. III. c. 63, § 30, for usury, and the plaintiff recovered Sa. Rs. 50 880, the total amount of the penalties, proved to have been incurred, and payable to plaintiff for the use of himself and the Company. See *ante* 48, *note* (2).

of the said Courts in the *East Indies*, and the person or persons prosecuted shall be there convicted, it shall be lawful for such Court to order, as part, or for the whole, of the punishment, any such person or persons to be sent and conveyed to *Great Britain*.

on conviction of misdemeanor, Court may order party to be sent to Great Britain.

CXLI. AND BE IT FURTHER ENACTED, that whenever any action, bill, suit, information, or indictment shall be brought or prosecuted in any of His Majesty's Courts of Record at *Westminster*, for any offence against this act, whether for a penalty, forfeiture or misdemeanor, the offence shall be laid or alleged to have been committed in the city of *London* or county of *Middlesex*, at the option of the informer or prosecutor; and all actions, bills, suits, *informations*, and indictments for any offence or offences against this act, whether filed, brought, commenced, or prosecuted for a penalty or forfeiture, or for a misdemeanor, in any of His Majesty's Courts of Record at *Westminster*, or in the said Supreme Court, or any such Mayor's Court as aforesaid, shall be brought and prosecuted within six years next after the offence shall be committed; and a capias shall issue in the first process, and, in the case of an offence hereby made punishable by any penalty or forfeiture, such capias shall specify the sum of the penalty or forfeiture sued for, and the person or persons sued or prosecuted for such penalty shall, on such capias, give to the person or persons to whom such capias shall be directed, sufficient bail or security, by natural born subjects or denizens, for appearing in the Court out of which such capias shall issue, at the day or return of such writ, to answer such suit or prosecution; and shall likewise, at the time of such appearance, give sufficient bail, or security, by such persons as aforesaid, in the same Court, to answer and pay all the forfeitures and penalties sued for, if he, she, or they, shall be convicted of such offence or offences, or to yield his, her or their body or bodies to prison; but, if the prosecution shall be for any offence or offences against this act, punishable only as a misdemeanor, then the person or persons against whom such capias shall issue, being thereupon arrested, shall be imprisoned, and bailable according to law, as in other cases of misdemeanor.

If prosecuted in Courts at Westminster, how offence shall be laid.

Limitation of actions and prosecutions.

Capias to issue, to specify sum of penalty,

bail thereon for appearance.

Bail to Court to pay penalty, or render himself to prison.

If for a misdemeanor imprisonment, and bailable according to law.

Recites 13 G. III. c. 63, § 38.

CLI. "AND WHEREAS, the Governor-General and the "other Members of the Supreme Council of Fort William "in Bengal, and the Chief Justice and other Justices of the "Supreme Court of Judicature at Fort William aforesaid, "are, at present, the only persons authorized by law to act "as Justices of the Peace, within and throughout the provin-"ces, districts, and countries of *Bengal, Behar* and *Oris-"sa;* and the Governor or President, and the other mem-"bers of the Council of *Fort Saint George*, on the Coast "of Coromandel; and the Governor or President, and "the other Members of the Council of *Bombay*, are the "only persons authorized by law to act as Justices of the "Peace in and for the presidency of *Fort Saint George*, "and the presidency, island, town, and factory of *Bombay*, "and the places belonging and subordinate to the said "two last mentioned presidencies respectively. And "whereas, for preserving and maintaining the peace in the "said provinces and presidencies aforesaid, and the places "subordinate thereto, it is expedient that a further number "of persons should be appointed to act as Justices of the "Peace, in and for the same respectively;" Be it therefore further enacted, that it shall and may be lawful to and for the Governor-General in Council, of Fort William in Bengal, for the time being, by commission, to be, from time to time, issued, under the seal of the Supreme Court of Judicature there, in the name of the King's Majesty, his heirs and successors, tested in the name of the Chief Justice of the said Court, (which said commissions the said Supreme Court of Judicature is hereby authorized and required, from time to time, by any order or warrant from the said Governor-General in Council, to issue accordingly,) to nominate and appoint such and so many of the covenanted servants of the said Company, or other British inhabitants (1) as the said Governor-General in Council shall think properly qualified, to act as Justices of the Peace within and for the said provinces, and presidencies,

The Governor-General in Council to appoint Justices of the Peace, to act within the provinces and presidencies by commissions to be issued by Supreme Court on warrant from Governor-General in Council.

(1) By 2 & 3 W. 4, c. 117, the Governor-General and Governor in Council, may nominate and appoint any person resident within the territories under the Government of the Company, not being subjects of any foreign State, whom they may think qualified, to act as Justices of the Peace for the towns of Calcutta, Madras, and Bombay.

See the present Commission of the Peace, Appendix.

and places thereto subordinate respectively, and such persons shall, according to the tenor of the respective commissions, wherein they shall be so nominated and appointed, and by virtue thereof, and of this act, have full power and authority to act as Justices of the Peace, according to the tenor of the same commissions, wherein they shall be respectively named, in and for the provinces and presidencies aforesaid, and places subordinate thereto, respectively; and the said Supreme Court, upon any requisition in writing from the said Governor-General in Council, shall, and may, from time to time, supersede such commissions, and, upon like requisition, issue new commissions, for the purposes aforesaid, unto the same or such other of the covenanted servants of the said Company, or other British inhabitants, as shall, from time to time, be so nominated by the said Governor-General in Council in that behalf; all which commissions shall be filed of record in the respective Courts of Oyer and Terminer of the province, presidency, or place wherein, and for which, the same shall be issued as aforesaid; Provided always, that the persons who shall be so nominated and appointed as aforesaid, shall not be capable of holding any Court of Oyer and Terminer and Gaol Delivery, nor to sit in any such Court, unless the Justices of the said Court (1) shall, on any particular occasion, call upon them so to do, in which case, and so often as the same shall happen, the persons so called upon shall and may for that time, associate with them, and sit as Justices of the said Court of Oyer and Terminer and Gaol Delivery by virtue of this act, and have a deliberative voice, being first specially authorized for that purpose by order in Council.

Court on requisition of Governor-General in Council to supersede same and issue new commissions.

Commissions to be filed in the Courts of Oyer and Terminer.

Proviso that such Justices shall not hold or sit in any Court of Oyer and Terminer, and Gaol Delivery, unless called upon by the Justices of such Court, and then by special order in Council.

CLII. PROVIDED ALWAYS, and be it further enacted, that no person to be nominated, and appointed in and by any such commission as aforesaid, shall be capable of acting as a Justice of the Peace, in any of the said provinces or presidencies, until he shall have taken and subscribed in the Court (2) of Oyer and Terminer, of the province or

No person capable of acting as Justice of the Peace, until he shall have taken in the

(1) See Charter § 21. *ante* 25, *note* (2) and see 13 G. III. c. 63. § 38. *ante* 53.

(2) By the 53, G. III. c. 155, § 112, the oaths may now be taken before any Justice of the Peace in any Civil or Criminal Court of Justice within the Provinces.—[*C.*]

Court of Oyer and Terminer, the requisite oaths, that prescribed by 18 G. 2. c. 20, excepted.

presidency, for which he shall be appointed to act as a Justice of the Peace, the like oaths as are appointed to be taken by Justices of the Peace in *Great Britain*, or as nearly to the tenor thereof as the case will admit, and as shall be approved by the said Court; the oath of qualification prescribed by an act of the 18th year of his late Majesty, King George the Second, intituled "An act to amend and render more effectual an act passed in the fifth year of his present Majesty's reign," intituled "An act for the qualification of Justices of the Peace," only and always excepted.

All convictions, judgments, orders and proceedings before Justices of the Peace removable by certiorari into the Court of Oyer and Terminer.

CLIII. PROVIDED ALWAYS, and be it further encated and declared, that all convictions, judgments, orders, and other proceedings, which shall be had, made, or pronounced by or before any Justice or Justices of the Peace, within any of the British settlements or territories in *India*, out of the Court of Oyer and Terminer, within and for the same, shall and may be removable by writ of certiorari, into the Court of Oyer and Terminer and Gaol Delivery, of and for the same presidency, at the instance of any of the parties thereby affected or aggrieved, at any time within the space of six calender months next, after the making or pronouncing thereof respectively; and for that purpose it shall and may be lawful to and for any one or more of the Justices of the said Court of Oyer and Terminer and Gaol Delivery, and such Justice or Justices, is and are, hereby required, at the instance of such party or parties, to grant his fiat or warrant to the Keeper of the Rolls of the Peace, or other proper officer, to award a writ of certiorari under the seal of the Supreme Court of Judicature, when the matter shall arise, in *Bengal, Behar*, or *Orissa*, or, if it shall arise in the presidency of Fort Saint George, or in the presidency of *Bombay*, or in any settlement or place subordinate thereto, respectively, then under the seal of the Mayor's Court of the presidency, wherein the matter shall so arise, or to which the cognizance thereof shall belong, for the removal and bringing of such conviction, judgment, order, or other proceeding, into the said Court of Oyer and Terminer and Gaol Delivery; and that the said Court of Oyer and Terminer and Gaol Delivery, shall have full power and authority to hear and determine the matter of such conviction, judgment

Which shall have power to hear and determine the matter of such proceedings in like

order, and other proceeding so removed, and to quash or affirm the same, so that the same be not quashed for want of form, but on the merits only, and to pronounce judgment thereon, in the like manner as the Court of King's Bench at *Westminster* can, or may do upon convictions, judgments, orders, or other proceedings had, or made by, or before any Justices of the Peace, or Court of Quarter Sessions in *England*, removed or brought into the said Court of King's Bench by writ of certiorari. (1)

manner as the Court of King's Bench.

CLIV. PROVIDED ALSO, and be it enacted and declared, that before the granting of any such writ, the like recognizances shall be entered into, and the party or parties applying for such writ, shall be put under the same terms and conditions, in all respects, as are by law directed and provided in the cases of writs of certiorari, awarded or granted for the removal of any conviction, judgment, order, or other proceeding had, or made, by or before any Justice or Justices of the Peace in *England*, into the said Court of King's Bench, or as by the usage and practice of the same Court hath been accustomed.

Before granting writs of certiorari, recognizance to be entered into as in Court of King's Bench in like cases.

CLV. AND BE IT FURTHER ENACTED, that it shall, and may, be lawful for the Governor-General in Council of *Fort William*, or the Governors of *Fort Saint George* and *Bombay*, by any order to be made in their Councils respectively, to call any of the Justices of the Peace, authorized in and by any such commission or commissions, as aforesaid, to sit and associate with the said Governor-General in Council, or Governor in Council, for the more speedy hearing and determining of causes appealed (2); and that the said Justices shall, and they are hereby authorized and required, when so called upon, to act as Justices in the Court of Appeals accordingly, and to have and use deliberative voice in all proceedings upon such appeals.

Justices of the Peace may be called by order to sit in Council of Presidency to hear appeals.

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(1) See Charter § 21. *ante* 25. 39 & 40 G. III. c. 79. § 19. and 53 G. III. c. 155, § 105. and see 9 G. IV. c. 74, § 49. No certiorari allowed to remove convictions under that Statute, though in certain cases, an appeal lies to the Quarter Sessions. See charge of Mr. Justice Ryan to the Grand Jury, Appendix; and see *ante* 25, *note* (2).

(2) See 21 G. III. c. 70. § 21. *ante* 68.

Admiralty Jurisdiction given by Charter recited.

CLVI. "AND WHEREAS, *by the Charter of Justice, under the great seal of* Great Britain, *bearing date the twenty-sixth day of March, in the fourteenth year* of his present Majesty's reign, for establishing the Supreme Court of Judicature of Fort William in Bengal, his Majesty did grant, ordain, establish, and appoint, that the said Supreme Court of Judicature should be a Court of Admiralty, with power and authority to enquire, hear, try, examine, and determine, by the oaths of British subjects, all treasons, murders, piracies, robberies, felonies, maimings, forestallings, extortions, trespasses, misdemeanors, offences, excesses, and enormities, and maritime causes whatsoever, *according to the laws and customs of the Admiralty of* England, *done, perpetrated, or committed upon the high seas, rivers, ports, creeks, harbours and places overflown, within the ebbing and flowing of the sea and high water mark within, about, and throughout, the provinces, countries, or districts of* Bengal, Behar, *and* Orissa, *and the territories or islands* adjacent thereto and dependent thereon, the cognizance whereof doth belong to the jurisdiction of the Admiralty, *as the same is used and exercised in that part of* Great Britain *called* England. And whereas doubts have arisen how far the jurisdiction of the said Supreme Court, in criminal matters, is limited by the said charter, to offences committed on the coasts of *Bengal, Behar, and Orissa,* territories or islands respectively, within the ebbing and flowing of the sea, and high water mark; and inasmuch as it is essentially necessary, that the Admiralty jurisdiction of the Supreme Court of Judicature, should extend to crimes and offences committed on the high seas at large;"

Power and authority given thereby to the Court to extend to the High Seas.

Be it further enacted and declared, that the power and authority of the said Court, granted to them by the said Charter of Justice, shall extend and be extended to the high seas, and that the said Court shall, by force and virtue of this act, have full power and authority to enquire,

Court to have jurisdiction over all offences, misdemeanors, and maritime causes,

hear, try, examine, and determine, by the oaths of honest and lawful men, being British subjects, resident in the town of *Calcutta,* all treasons, murders, piracies, robberies felonies, maimings, forestallings, extortions, trespasses,

misdemeanors, offences, excesses, and enormities, and maritime causes whatsoever, (1) according to the laws and customs of the Admiralty of *England*, done, perpetrated, or committed upon any of the high seas, and to fine, imprison, correct, punish, chastise, and reform parties guilty, and violators of the laws, in like, and in as ample, manner, to all intents and purposes, as the said Court might or could do, if the same were done, perpetrated, or committed, within the limits prescribed by the said Charter of Justice, and not otherwise, or in any other manner. (2)

according to the Admiralty of England, committed on the high seas,

as if offences committed within limits prescribed by Charter.

CLVII. "AND WHEREAS, it is expedient, that Coroners "should be appointed for the settlements in *India*, for tak- "ing inquests upon view of the bodies of persons coming, "or supposed to have come, to an untimely end;" Be it enacted, that the Governor-General in Council, at *Fort William*, and the Governors in Council, at *Fort Saint George*, and *Bombay*, within their several presidencies and governments respectively, shall have full power and authority, by orders in Council, from time to time, to nominate and appoint, so many Coroners, being British subjects, as they shall respectively think fit, or as shall be limited by the Court of Directors of the said Company, and by like orders to supersede and remove the persons so appointed, as occasion may appear to require; and that the persons so nominated, and taking and subscribing before one of the Judges of the Supreme Court of Judicature, or one of the Mayor's Courts, the like oaths, as are directed to be taken by the Coroners of Counties in *England*, shall and may, by force of this act, have, do, execute, perform and exercise the like powers, authorities, and jurisdictions, within the presidency or settlement for which they shall be so respectively nominated and appointed, as by law may be had, done, executed, performed, or exercised by Coroners, elected for any county or place in *England*, and not otherwise, or in any other manner; and that such

The Governors of Presidencies may appoint Coroners, who may exercise the same powers as Coroners in England.

(1) See the case of Collier qui tam *v.* the Cutter Dispatch, for contravention of the Navigation Acts, 4th February, 1817, Appendix of cases.

(2) See Charter § 27, *ante* 30.—The 53. G. III. c. 155, § 110, extending the Admiralty jurisdiction of the Kings's Courts, at the three Presidencies. —[C.]

And see 9. G. IV. c. 74. §. 25, as to punishment of offences.

Coroners shall have and be entitled unto such reasonable fees and allowances, (1) for the performance of the duty of their said office, as shall be limited or prescribed by the said respective Governments in that behalf. (2)

Recites 1 G. I. c. 52.

CLVIII. AND WHEREAS, by an act of the first year of "the reign of his late Majesty, King George the First, intituled; "*An act for making the laws for repairing the* "*highways more effectual,*" provision was made for authorizing Justices of the Peace, in cities and market towns, "at their General or Quarter Sessions, to appoint Scavengers for cleansing and repairing the streets of the same, "and to raise money by assessments, upon the inhabitants for defraying the expenses thereof. And whereas, by an act passed in the seventh year of the reign "of his present Majesty, to amend and reduce into one "act, the Statutes for the amendment and preservation "of the *public highways*, it was enacted, that the said "recited act of the first year of King George the First, "should be repealed; And whereas it is essentially necessary for the health, as well as for the security, comfort, and "convenience, of the inhabitants of the towns and factories "of *Calcutta*, *Madras*, and *Bombay*, in the *East-Indies*, "that the *streets* therein, should be regularly and effectually *cleansed*, *watched*, *and repaired*;" Be it therefore enacted, that it shall and may be lawful, to and for the Justices of the Peace, within or for the presidencies of *Fort William*, *Fort Saint George*, and *Bombay* respectively, for the time being, or the major part of them, from time to time assembled, at their General or Quarter Sessions, to appoint Scavengers, for cleansing the streets of the said towns or factories of *Calcutta*, *Madras* and *Bombay*, respectively, and to nominate and appoint such persons as they shall think fit in that behalf, and also to order the watching and repairing of the streets therein, as they respectively shall judge necessary; and for the purposes of defraying the expenses thereof, from time to time, to make an equal assess-

And 7 G. III. c. 42.

Justices may appoint Scavengers for cleansing the streets of Calcutta, Madras, and Bombay, and may order their being watched and repaired,

and make assessments for these purposes, on the owners,

(1) See 25 G. II. c. 29. as to remuneration of Coroners.

(2) In McClintock v. de Bast, 1824, the Sheriff being a party, a fi. fa. was directed to the Under Sheriff. Held, that the Coroner could not insist on the writ being directed to him.—[C.]

ment or assessments, on the owners or occupiers of houses, buildings, and grounds, in the said towns or factories respectively, according to the true and real annual values thereof, so that the whole of such assessment or assessments shall not exceed in any one year, the proportion of one-twentieth part of the gross annual values thereof, respectively, unless any higher rate of assessment shall, in the judgment of the Governor-General in Council, or Governor in Council, of the said respective presidencies, become essentially necessary for the cleansing, watching, or repairing thereof, in which case the said Governor-General in Council, or Governor in Council, shall and may, on any such urgent occasion, by order in Council, authorize a further assessment, not exceeding in any one year the half part of the amount of the ordinary annual assessment herein before limited, and that it shall be thereupon lawful for the said Justices, to make a further assessment according to the tenor of such order, and not otherwise, or in any other manner; and that all and every such assessment or assessments, shall and may, from time to time, be levied and collected by such person or persons, and in such manner, as the said Justices, by their order in session, shall direct and appoint in that behalf, and the money thereby raised, shall be employed and disposed of, according to the orders and directions of the said Justices in session, respectively, for and towards the repairing, watching, and cleansing the said streets, and for no other purpose; and that the said assessments, being allowed under the hands and seals of such Justices, or any two or more of them, shall and may be levied by warrant under their hands and seals, or the hands and seals of any two of them, (1) by distress and sale of the goods and chattels of any person or persons not paying the same within eight days after demand, rendering the overplus (if any be) to the same person or persons, the necessary charges of making, keeping, and selling such distress or distresses, being first deducted.

or occupiers of houses, buildings & grounds,

not exceeding one - twentieth part of gross annual values thereof.

Unless higher rate shall appear to Governor-General in Council essentially necessary for such purposes.

When he may authorise, further assessment not exceeding the half part of the annual assessment aforesaid.

Justices to make same accordingly.

Collector thereof to be appointed by the order in Session.

Assessments to be applied accordingly.

And allowed and levied by warrant under hands and seals of two Justices.

CLIX. AND BE IT FURTHER ENACTED, that it shall not be lawful for any person or persons to sell any arrack or

No spirituous liquors to be

(1) See Acts of the Government of India—No. 1 of 1837 and No. 32 of 1838, rendering the signature of one Justice sufficient.

sold in Calcutta, Madras, and Bombay, without licence.

other spirituous liquors, within the towns or factories of *Calcutta, Madras,* and *Bombay,* respectively, without a licence for that purpose, under the hands and seals of two (1) or more of the Justices of the Peace, having jurisdiction; and that the powers and authorities vested, by any laws or statutes now in force in that part of *Great Britain,* called *England,* in any Justices of the Peace, for restraining the inordinate sale of spirituous liquors, shall extend to and be put in force against all unlicensed traders in spirits or spirituous liquors, within the said towns and factories respectively, by the Justices having jurisdiction therein; and that if any question shall arise touching or concerning the true limits and extent of the said towns and factories, or any of them, the same shall be enquired into by the Governor-General in Council, at Fort William, in respect to the limits and extent of *Calcutta,* and by the Governor in Council of Fort Saint George, in respect to the limits and extent of *Madras,* and the Governor in Council at Bombay, in respect to the town of *Bombay,* and that such limits as the said respective governments, by order in Council, shall declare and prescribe to be the limits of the said towns and factories respectively, shall be held, deemed, and taken in law as the true limits of the same, any custom or usage to the contrary notwithstanding. (2)

Governor-General &c, in Council, to prescribe limits of Calcutta, &c. by order in Council.

Limitation of suits under this Act.

CLXII. AND BE IT FURTHER ENACTED, that all suits and prosecutions, for any thing done under or by virtue of this act, shall be commenced within the space of three years after the cause of complaint shall have arisen; or, being done in *Great Britain,* in the absence of any persons beyond sea aggrieved thereby, then within the space of three years next, after the return of such person to Great Britain.

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(1) See *ante* 87, *note* (1).

(2) Further powers given to the Governor and Council, by the 55 G. III. c. 84 § 1.—[*C.*]

And see Proclamation fixing the limits of Calcutta, issued by Government on the 16th September 1794, Appendix.

" *An* Act *for the better Administration of Justice at* " Calcutta, Madras, *and* Bombay, *and for preventing* " *British Subjects from being concerned in Loans* " *to the Native Princes in* India."

[20*th July* 1797.]

" WHEREAS by an Act, passed in the *thirteenth year* " of the reign of his present Majesty, intituled " *An Act* " *for establishing certain regulations for the better* " *management of the affairs of the* East India *Company,* " *as well in* India *as in* Europe;" It was enacted, that it " should be lawful for his Majesty, by letters patent, under " the great seal of *Great Britain,* to erect and establish " a Supreme Court of Judicature, at Fort William in " Bengal, to consist of a Chief Justice, and three other " Justices, being barristers of *England* or *Ireland,* of " not less than five years' standing, to be named from " time to time by his Majesty, his heirs and successors; " and whereas by the said act, and by divers other acts " of Parliament, certain jurisdictions, powers, and authori- " ties, were given to the said Court, to be exercised in " the manner therein directed; and whereas it may be " expedient that the number of Judges should be reduc- " ed;" Be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that immediately after the death, resignation, or removal, of any of the Puisne Judges of the said Supreme Court, that the office of one of the said Puisne Judges shall be, and the same is hereby, suppressed; and from and immediately after such death, resignation, or removal, the said Supreme

Recites 13 G. III. c. 63.

On the death, &c. of any of the Puisne Judges of the Supreme Court, it shall consist of a Chief Justice and two other Judges.

Court, shall consist of a Chief Justice, and two other Judges only; and all powers, jurisdictions, and authorities whatsoever, shall, from and after such period as aforesaid, be enjoyed and exercised by the said Chief Justice and other Judges, in as full and ample a manner as the same might have been held, enjoyed, and exercised, by the said Supreme Court, under the authority of the said herein before recited act, or any other act or acts of Parliament, or under the Charter of Justice, granted by his Majesty under the authority of the same.

The Supreme Court, where the matter in dispute does not exceed 1,000 pagodas, may direct depositions to be filed of record, or not.

IV. "AND WHEREAS, by the *Charter of Justice, granted by his Majesty, under the authority of the herein before recited Act, passed in the thirteenth year of his present Majesty's reign,* the said Supreme Court of Judicature, was directed and required to reduce or cause to be reduced, to writing, the depositions of witnesses in civil causes, and was directed to require the same to be subscribed by such witnesses, with their name or other mark, and to file the same of record. And whereas by the said Charter of Justice, it was also directed, that no appeal should be allowed from the said Supreme Court of Judicature, unless the value of the matters in dispute exceed the sum of one thousand pagodas. And whereas the requiring the depositions of witnesses to be reduced into writing, and filed of record, is productive of much expence and delay in small causes, where the value of the matter in dispute does not exceed one thousand pagodas, and which, for that reason, cannot be made the subject of appeal;" Be it therefore enacted, that from and after the passing of this act, it shall be in the discretion of the said Supreme Court, in all cases when the value of the matter in dispute does not exceed one thousand pagodas, either to direct the depositions of witnesses to be reduced into writing, and filed of record, or not, as the said Court shall think fit in the particular case; any thing in the said Charter of Justice contained to the contrary notwithstanding. (1)

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(1) By the practice of the Court, it is optional with the parties, in all ejectment causes of any value, and in other causes for a sum exceeding 1,000

XXVIII. "AND WHEREAS, the practice of *British* subjects lending money, or being concerned in the lending of the same, or in transactions for the borrowing money for, or lending money to the native Princes in *India*, has been productive of much mischief, and is the source of much usury and extortion: And whereas the wholesome orders of the Court of Directors of the United Company of Merchants, trading to *India*, have not been sufficient to restrain and repress the same; And whereas it is highly desirable that such practices should be prevented in future;" Be it therefore enacted, that from and after the first day of December next, no *British* subject shall, by himself, or by any other person, directly or indirectly employed by him, lend any money or other valuable thing to any native Prince in *India*, by whatever name or description such native Prince shall be called; nor shall any *British* subject, either by himself or by any other person, directly or indirectly employed by him, be concerned in the lending any money to any such native Prince; nor shall any *British* subject be concerned, either by himself or by any other person, either directly or indirectly, in raising or procuring any money for any such native Prince, or as being security for such loan or money; nor shall any *British* subject lend any money or other valuable thing to any other person, for the purpose of being lent to any such native Prince, nor shall any *British* subject, by himself or any other person, either directly or indirectly for his use and benefit, take, receive, hold, enjoy, or be concerned in any bond, note, or other security or assignment, granted or to be granted by any such native Prince after the first day of December next, for the loan, or for the repayment of money, or other valuable thing, without the consent and approbation of the Court of Directors of the *East India* Company, or the consent and approbation of the Governor in Council, of one of the said Company's Governments in *India*, first had and obtained in writing; and every person doing, acting, or transacting, or being

From Dec. 1, 1797, no British subject to lend any money to, or be concerned in lending to, or raising any for native Princes without consent of the Court of Directors, or the Governor in Council; and any person doing so, may be prosecuted for a misdemeanor.

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pagodas, to have the depositions reduced to writing. In *ex parte* cases, exceeding 1,000 pagodas, they are always taken down.—[C.]

concerned in any actings, doings, and transactions contrary to this act, shall be deemed and taken to be guilty of a misdemeanor at law, and shall and may be proceeded against and punished as such, by virtue of this act, before any Court of competent jurisdiction; and all bonds, notes, assignments, or securities for money, of what kind or nature soever, taken, held, or enjoyed, either directly or indirectly, for the use and benefit of any *British* subject, contrary to the true intent and meaning of this act, shall be, and the same are hereby declared to be, null and void, to all intents and purposes.

Security for money lent contrary hereto, to be void.

On complaint to the Governments in India for acting contrary to this act, the case to be laid before the law officers, whose report shall be transmitted to the Court of Directors.

XXIX. AND BE IT FURTHER ENACTED, that when and so often as any information shall be given, or complaint made to any of the Governments of the said United Company in the *East-Indies*, of any person having acted contrary to the provisions of this act, such Governments shall forthwith lay the case before the Company's law officers at the settlement where it arises, who shall take the same into their consideration, and report their opinion thereupon, whether the same is a proper case for prosecution, (together with their reasons for the same,) which report shall be transmitted home to the Court of Directors by the first convenient opportunity.

Jurisdictions of the Courts of Requests at Madras, Bombay, and Calcutta, extended to 80 rupees.

XXX. "AND WHEREAS, the provision made by the "Charter of Justice of his late Majesty, for the establish-"ment of a Court of Requests, in and for the towns of *Ma-"draspatnam, Bombay,* and *Calcutta,* for the recovery "of debts, duties, and demands therein, not exceeding the "value of five pagodas, in manner therein directed, hath "been found beneficial and convenient; And whereas, an "extension of jurisdiction of the said Courts for the re-"covery of debts, duties, and demands, to a larger amount "in value, is found to be useful;" Be it therefore enacted, by the authority aforesaid, that the jurisdiction of the said Courts of Requests, at and for the said towns of *Madraspatnam, Bombay,* and *Calcutta* respectively, shall be, and the same is extended to the recovery, of all or any manner of debts, duties, and demands, not exceeding in value the sum of eighty current rupees respectively, and for that purpose, that the Commissioners of the said Courts of Requests,

and their successors, shall have full power and authority to hear and determine all actions, plaints, and suits which have grown, or shall be brought before them in their said respective Courts, where the debt, duty, or matter in dispute shall not exceed the said value of eighty current rupees, and to award execution thereupon for the debt, or sum adjudged to be due, in the same manner as they now do for debts and demands under the sum of five pagodas. (1)

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(1) But see 39 & 40 G. III. c. 79, § 17, and notes. See also the Proclamations extending the jurisdiction of the Court of Requests at Calcutta, Appendix.

" *An* Act *for establishing further Regulations for the* " *Government of the British Territories in* India, " *and the better Administration of Justice within* " *the same.*"

[28*th July* 1800.]

Authorises the Governor-General to new model and alter form of and issue Proclamation for extending the jurisdiction of Court of Requests.

SEC. XVII. (1) " AND WHEREAS, great inconveni- " encies have resulted from the manner in which the Courts " of Requests (2) for the recovery of small debts in the " respective settlements of *Fort William* and *Fort Saint* " *George* are constituted;" Be it therefore further enacted, that it shall and may be lawful, to and for the Governor-General and Council of *Fort William*, and for the Governor and Council of *Fort Saint George* aforesaid, for the time being, respectively, to order and appoint in what manner the said Courts respectively, shall in future be formed, and to what amount in value, not exceeding the sum of four hundred sicca rupees, the jurisdiction of the same shall extend, and to frame and make such new rules and orders, and to establish and declare such new modes and forms of proceeding, as to them shall appear to be necessary and expedient for new modelling, altering, and reforming the present constitution and practice of the said Courts, respectively, and by their proclamation, to be made and published in due form of law, to declare and notify to all persons concerned, such new constitution, rules, orders, modes, and forms of

(1) The secs. 13. 14. 15. 16. of this act relating to the transportation of offenders, are repealed by 9. G. IV. c. 74. § 126, and are therefore omitted in this edition.—See § 29. 9. G. IV. c. 74. See also Act, No. 31, of 1838.

(2) See Charter, § 21, *ante* 25, and Charter 26 G. II. Appendix, and see Proclamations issued under this Statute, Appendix.

proceeding, and the time from whence they are to have force and effect; and from and after such time as shall be so respectively notified for that purpose, the present Court of Requests, as well as the rules, orders, modes, and forms of proceeding, which are now used and observed therein, shall be abolished and cease, and thenceforth the new Court, rules, orders, modes, and forms of proceeding, which the said Governor-Generral and Council are authorised and empowered, under and by virtue of this act, to make and publish, shall be in full force and effect, any former act or acts to the contrary thereof in any wise notwithstanding.

The Province of Benares and other places to be annexed to Fort William, made subject to the jurisdiction of the Supreme Court.

XX. "AND WHEREAS, the province or district of Benares has been ceded to the said United Company, and been annexed to the said Presidency of Fort William in Bengal, since the establishment of the said Supreme Court of Judicature, at Fort William aforesaid, and it is expedient that the same should be subject to the jurisdiction of the said Court, in like manner as the kingdoms or provinces of *Bengal, Behar,* and *Orissa,* and that the said province or district, and all other provinces or districts which may hereafter be at any time annexed and made subject to the said Presidency, should be subject to such Regulations as the Governor-General and Council of Fort William aforesaid, have framed, or may frame, for the better administration of justice among the native inhabitants and others within the same respectively;" Be it therefore further enacted, that from and after the first day of March, which will be in the year of our Lord one thousand eight hundred and one, the power and authority of the said Supreme Court of Judicature, in and for the said presidency of Fort William aforesaid, as now and by virtue of this act established, and all such regulations as have been or may be hereafter, according to the powers and authorities, and subject to the provisions and restrictions before enacted, framed and provided, shall extend to and over the said province or district of Benares, and to and over all the factories, districts, and places which now are, or hereafter shall be made subordinate thereto, and to and over all such provinces and districts as may at any time

hereafter, be annexed and made subject to the said presidency of Fort William aforesaid.

Administration of intestates, where no next of kin or creditor appears to be granted to the Registrar.

XXI. "AND WHEREAS, great inconveniencies have "arisen from the practice of granting letters of administration by the said Supreme Court of Judicature, at Fort "William aforesaid, in cases where the next of kin or any of "the creditors of the deceased, do not apply for the same, to "persons calling themselves friends of the deceased;" (1) Be it therefore further enacted, that from and after the first day of March, which will be in the year of our Lord one thousand eight hundred and one, whenever any *British* subject shall die intestate, within either of the presidencies of *Fort William, Fort Saint George*, or *Bombay*, or the territories subordinate to either of the said presidencies, or to become subordinate thereto, and on return of the citation to be issued from the proper Ecclesiastical Court, no next of kin or creditor shall appear and make out their claim to the administration of the effects of the intestate deceased, to the satisfaction of the said Court, it shall and may be lawful for the Registrar of such Court respectively, and he is hereby required to apply for, and such Court is hereby required and directed to grant, such letters ad colligenda or of administration, as to such Court shall seem meet, by virtue whereof such Registrar shall collect the assets of the deceased, and shall bring them for safe custody into such Court, and account for them regularly, in like manner, as is now by law provided, in cases where assets are vested in the hands of any officer of the Court under or by virtue of the equitable jurisdiction of any such Court.

When next of kin or creditor appears, &c. administration to Registrar to be recalled, &c.

XXII. PROVIDED ALWAYS, AND BE IT FURTHER ENACTED, that when any next of kin or creditor, who at the time of the return of the above citation, shall have been absent in Europe or elsewhere, shall make and establish their claim to the administration of the assets of such intestate, the letters ad colligenda or of administration, granted by virtue of this act to the said Registrar, shall be recalled,

(1) See Charter § 27, *ante* 26, *note* (1).

and administration in due form granted to such next of kin or creditor respectively.

His Majesty may appoint all or any of the Judges, &c., Commissioners, for the trial of prize causes.

XXV. "AND WHEREAS, it may be expedient for his Majesty, his heirs or successors, to issue a commission from his High Court of Admiralty in *England*, for the trial and adjudication of prize causes and other maritime questions arising in *India*;" Be it therefore further enacted, that it shall and may be lawful for his Majesty, his heirs and successors, to nominate and appoint all or any of the Judges of the Supreme Court of Judicature, at Fort William aforesaid, or of the Supreme Court of Judicature, to be erected as aforesaid at *Madras*, or the Court of the Recorder at *Bombay*, either alone or jointly with any other persons to be named in such commission, (1) to be Commissioners for the purpose of carrying such commission so to be issued as aforesaid into execution, any act or acts to the contrary thereof in any wise notwithstanding.

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(1) See Commission, dated 19th July 1822, Appendix.

"*An* Act *for continuing in the* East India *Compa-*
"*ny, for a* further term, *the possession of the* British
"territories *in* India, *together with certain exclusive*
"*privileges, for establishing further regulations for*
"*the Government of the said territories, and the*
"*better administration of justice within the same,*
"*and for regulating the trade to and from the*
"*places within the limits of the said Company's*
"*Charter.*"

[21*st July* 1813.]

Advocate-General may exhibit informations to the King's Courts, for breaches of the Revenue laws of the Governments of India.

SEC. C. AND BE IT FURTHER ENACTED, that it shall and may be lawful for the Advocate-General, or other principal law officer of the said Company, at the several presidencies of *Fort William, Fort Saint George, Bombay,* and *Prince of Wales' Island,* to exhibit in behalf of the said Company, to the Supreme Courts of Judicature, at *Fort William* and *Madras,* Recorder's Court at *Bombay,* and Court of Judicature at *Prince of Wales' Island,* as occasion shall require, against any person or persons whomsoever, subject to the jurisdiction of the said several Courts respectively, any information or informations for any breach or breaches of the revenue laws or regulations of any of the said Governments, or for any fine or fines, penalty or penalties, forfeiture or forfeitures, debt or debts, or sum or sums of money, committed, incurred, or due by any such person or persons, in respect of any such laws or regulations; and such proceedings shall be had and taken upon every such information, as may lawfully be had or taken, in case of an information filed by his Majesty's Attorney-General in the Court of Exchequer in *England,* for any offence committed against the revenue laws

of *England*, or for any fine, penalty, forfeiture, debt, or sum of money, due in respect thereof; so far as the circumstances of the case, and the course and practice of proceedings in the said Courts respectively will admit; and all fines, penalties, forfeitures, debts, and sums of money, recovered or levied under or by virtue of any such information, so to be exhibited as aforesaid, shall belong to the said United Company, and the same, or the proceeds thereof, shall be carried in their books of account to the credit of the territorial revenues of the said Company.

Penalties belong to the Company.

CII. AND FOR PREVENTING any delay of justice, or the unnecessary detention of persons charged with offences; Be it further enacted, that all his Majesty's Courts exercising criminal jurisdiction within the said several presidencies of the said Company, shall, and they are hereby required, four times at the least in every year, (1) on such days and at such convenient intervals of time as the Judges of the said Courts respectively shall appoint, to hold their Sessions, for the purpose of taking cognizance of all matters relating to pleas of the Crown.

King's Courts to hold Sessions four times in every year, for trying criminal offences.

CIII. "AND WHEREAS, great inconvenience and expense have hitherto been experienced in cases of prosecution, under the authority of the Advocate-General or other principal law officer of the said Company, at their several presidencies of *Fort William*, *Fort Saint George*, and *Bombay* respectively, for misdemeanors, committed at a distance from the said several presidencies, by the ordinary course of indictment or information, filed with leave of the Court;" Be it therefore enacted, that it shall and may be lawful for the Advocate-General, or other principal law officer of the said Company, at their several presidencies, in all cases of misdemeanor alleged to have been committed by any *British* subject, at a distance of more than one hundred miles from the presidency, within the limits whereof such offence shall be alleged to have been committed, to file an information ex officio in the Supreme Court of Judicature at *Fort William*, the Supreme Court of Judicature at *Madras*,

For misdemeanors committed by British subjects more than one hundred miles from a presidency, informations may be filed by the Advocate-General ex officio, and prosecuted as in like cases by Attorney-General in Courts of King's Bench in England.

(1) See 13 G. III. c. 63. § 13. *ante* 42, and see Charter § 37. *ante* 39, appointing two Sessions to be held. See also Crown Rule 1, *post*, vol. 2, 17.

or the Recorder's Court at *Bombay*, as the case may be, and all such proceedings shall and may be used and had upon such information as may lawfully be used and had in cases of information filed ex officio by his Majesty's Attorney-General in his Majesty's Court of King's Bench in *England*; any matter of thing to the contrary notwithstanding.

Magistrates in the provinces to have jurisdiction, in cases of assault and injury, accompanied with force, committed by British subjects on the persons or property of the natives of India, without the limits of Calcutta, Madras, and Bombay.

CV. "AND WHEREAS, his Majesty's *British* subjects, "resident in the British territories in *India*, without the "towns of *Calcutta*, *Madras*, and the town and island of "*Bombay*, are now, by law, subject only to the jurisdic- "tion of his Majesty's Courts at *Calcutta*, *Madras*, and "*Bombay* respectively, and are exempted from the juris- "diction of the Courts established by the said United "Company, within the said territories, to which all other "persons, whether natives or others, inhabitants in the "said territories, without the limits of the towns aforesaid, "are amenable; and whereas it is expedient to provide "more effectual redress for the native inhabitants of the "said territories, as well in the case of assault, forcible "entry, or other injury accompanied with force, which "may be committed by *British* subjects at a distance from "the places, where his Majesty's Courts are established, "as in case of civil controversies with such *British* "subjects;" Be it therefore enacted, that it shall and may be lawful, for any native of *India*, resident in the *East Indies*, or parts aforesaid, and without the said towns, in case of any assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a *British* subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony, to the Magistrate of the zillah or district where the alleged offender shall be resident, or in which such offence shall have been committed; and that such Magistrate shall have power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and, having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused; and, in case of conviction, to inflict upon such person a suitable punishment, by fine, not exceeding five hundred rupees, to be levied, in case of

On conviction to punish by

non-payment, by warrant under the hand of the said Magistrate, and upon any property of the party so convicted which may be found within the said district; and if no such property shall be found within the said district, then it shall be lawful for the said Magistrate, by warrant, also under his hand, to commit such offender to some place of confinement, within the said zillah or district, which, in the judgment of the said Magistrate, shall be fit for receiving such offender; or if there shall be no fit place of confinement, then to the gaol of the presidency, to remain there for a period not exceeding two months, unless such fine shall be sooner paid; and it shall be lawful for the said Magistrate, to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury: Provided always, that in all cases of conviction of a *British* subject, under the provision hereinbefore contained, the Magistrate before whom such conviction shall take place, shall forthwith transmit copies of such conviction, and of all depositions and other proceedings relative thereto, to the Government, to which the place wherein the offence was committed, is or shall be subordinate: Provided also, that all such fines shall be paid in the first instance to the Magistrate before whom the party offending shall be convicted, and the amount thereof, after making such satisfaction to the party aggrieved, aforesaid, if any, shall be transmitted by such Magistrate to the Clerk of the Crown, or other officer to whom it belongs to receive fines in his Majesty's Court of Oyer and Terminer and Gaol Delivery, for the province within which the offence shall have been committed; and such fines shall and may be disposed of in the same manner as other fines imposed by such Court of Oyer and Terminer and Gaol Delivery: Provided also, that all such convictions shall and may be removable by writ of *certiorari*, into the said Courts of Oyer and Terminer and Gaol Delivery respectively, in the same manner, and upon the same terms and conditions, and shall be proceeded upon, in the same manner in every respect, as is directed in the said act of the thirty-third year of his Majesty's reign, with regard to other convictions before Justices of Peace, in the *British* settlements or territories in *India*:

fine or imprisonment.

Copies of conviction and proceedings to be sent to the Government.

Fines to be paid to the Magistrate, and transmitted to Clerk of the Crown of King's Courts,

to be disposed of as fines imposed by Courts of Oyer and Terminer.

Convictions removeable by certiorari into said Courts and subject to provisions of 33 G. 3. c. 52.

Proviso that Magistrate may hold offender to bail where a fit case for prosecution in the King's Courts.

Provided also, that nothing herein contained shall extend or be construed to extend to prevent such Magistrate from committing or holding to bail any *British* subject, charged with any such offence before him, in the same manner as such *British* subject might have been committed or holden to bail, if this act had not been passed, where the offence charged shall appear to such Magistrate to be of so aggravated a nature, as to be a fit subject for prosecution in any of his Majesty's Courts, to which such *British* subject may be amenable. (1)

Magistrates to have jurisdiction, in cases of debt, not exceeding fifty rupees, due from British subjects, to natives, resident without the jurisdiction of Courts of Requests, and decision to be final, and amount levied as before provided in respect to fines.

CVI. AND BE IT FURTHER ENACTED, that in all cases of debt, not exceeding the sum of fifty rupees, alleged to be due from any *British* subjects to any native of *India*, resident in the *East Indies*, or parts aforesaid, and without the jurisdiction of the several Courts of Requests, established at *Calcutta*, *Madras*, and *Bombay* respectively, it shall and may be lawful for the Magistrate of the zillah or district where such *British* subject shall be resident, or in which such debt shall have been contracted, to take cognizance of all such debts, and to examine witnesses upon oath, and in a summary way to decide between the parties, which decision shall be final and conclusive, to all intents and purposes; and in all cases, where any such debt shall be found to be due from any *British* subject, to any such native of *India*, the amount thereof shall and may be levied, in the same manner, and subject to the same regulations and provisions, in respect to the commitment of the debtor, as are hereinbefore made and provided, in respect to the levying of fines in case of the conviction of a *British* subject before such Magistrate. (2)

British subjects residing or trading, or possessing immoveable

CVII. AND BE IT FURTHER ENACTED, that all *British* subjects of his Majesty, as well the servants of the said United Company as others, who shall reside, or shall

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(1) See 33 G. III. c. 52, secs. 153, 154, *ante* 82, 83, and Charter § 21, *ante* 25, and see Appendix of cases, tit. *Certiorari*, Pattle *v.* Paton.

(2) So much of this section as relates to debts due from officers and soldiers, being British ubjects, to natives of India resident without the jurisdiction of the Court of Requests, is repealed by the 4 Geo. IV. c. 81. § 57.—[C.]

carry on trade or other business, or shall be in the occupation or possession of any immoveable property in any part of the *British* territories in *India,* at the distance of more than ten miles from the several presidencies of *Fort William, Fort Saint George,* and *Bombay* respectively, shall be subject to the jurisdiction of all Courts which now have, or hereafter may have cognizance of civil suits or matters of revenue, either originally, or by way of appeal, within the districts or places where such *British* subjects shall so reside, or carry on trade or business, or possess or occupy immoveable property, in all actions and proceedings of a civil nature, and in all matters of revenue, (except as hereinafter excepted) in the like manner as natives of *India,* and other persons not *British* subjects, are now liable to the jurisdiction of such Courts, by and under the regulations of the several Governments of *Fort William, Fort Saint George;* and *Bombay* repectively: Provided always, that no *British* subject shall be liable to be sued in any such Court in respect of residence, unless he shall have his residence within the jurisdiction thereof, at the time of commencing the action or proceeding against him; or that the cause of suit shall have arisen within the jurisdiction of the said Court, and the suit shall be commenced within two years after the cause thereof shall have arisen, and also within six months after the defendant shall have ceased to reside within such jurisdiction; nor shall any *British* subject be liable to be sued in any such Court in respect of his carrying on trade or business within the jurisdiction thereof, unless the cause of suit shall have arisen within such jurisdiction, and shall relate to the trade or business so carried on; nor to be sued in respect of any immoveable property possessed or occupied by him unless such property shall be situated within the jurisdiction of the Court in which he shall be so sued, and such suit shall be brought to recover the possession or occupation of such property, or for rent, or other demand arising out of the possession or occupation of such property by such *British* subject: Provided also, that whereby the laws and regulations in force, or hereafter to be in force, within the provinces respectively, subject to the Governments

property, ten miles from the presidencies to be subject to the local civil jurisdiction of all Courts within the districts,

in like manner as natives and others are now subject under the Regulations of Government.

Provided that such subject be resident within the jurisdiction when action brought, or cause thereof arose therein, and brought within two years after same accrued, and also within 6 months after defendant has ceased to reside therein.

Not liable by reason of trade unless cause arose therein, and relating to trade.

Nor in respect of immoveable property unless situate there, and suit arising therefrom.

of *Fort William*, *Fort Saint George*, and *Bombay* aforesaid, it would be competent to a party to any final judgment or decree of any subordinate, civil or revenue Court of Judicature, to appeal therefrom to the Sudder Dewanny Adawlut, or other Court, however denominated, exercising within those provinces respectively, the highest appellate jurisdiction in civil suits, it shall be competent to *British* subjects of his Majesty, in suits commenced against them under the provisions of this act, instead of appealing to the said Sudder Dewanny Adawlut, or other Court so exercising the highest appellate jurisdiction as aforesaid, to appeal to the Supreme Courts of Judicature at *Fort William* or *Fort Saint George*, or the Recorder's Court at *Bombay*, according as the suit may have been commenced in the provinces subordinate to either of the said presidencies; and such Court shall have the same powers as to suspending or allowing execution of the judgment or decree appealed against, and as to taking security for costs, or for the performance of the decree or judgment of the said subordinate Courts, as the said Sudder Dewanny Adawlut or other such Court as aforesaid would have had, and shall also make rules of practice for the conduct of the said appeals, in all other respects conforming in substance and effect as nearly as possible to the course of procedure of the said Sudder Dewanny Adawlut, or other such Court as aforesaid in cases of appeal: Provided also, that nothing herein contained shall extend, or be construed to extend, to take away the jurisdiction of the said Supreme Courts of Judicature at *Fort William* and *Madras*, or the said Recorder's Court at *Bombay* respectively; but that all persons having cause of action against any *British* subject may, at their election, instead of suing in such provincial Courts as hereinbefore provided, commence and prosecute their said suits in the said Supreme Courts of Judicature, and the said Recorder's Court respectively, in the same manner as before the passing of this act: Provided also, that nothing herein contained shall extend or be construed to extend, to authorize the holding or occupying of any land or other immoveable property beyond the limits of the said several presidencies, by any *British* subject of his

Where an appeal would lie to the Sudder Dewanny Adawlut, or local Court, British subjects may appeal to his Majesty's Courts.

Proviso, not to bar the jurisdiction of the King's Courts.

Plaintiff may sue there, or in provincial Courts, at his election.

Majesty, otherwise than under and according to the permission of the Governments of the said presidencies. (1)

CIX. "AND WHEREAS, doubts have been entertained "whether persons being natives of India, in the service "of the United Company of Merchants of England, trad-"ing to the *East Indies*, or of any of his Majesty's sub-"jects, are amenable to the jurisdiction of the provincial "Courts established in the *East Indies*, or whether such "persons, being natives of *India*, in the service of the "said United Company, or of his Majesty's subjects, are "not exclusively amenable to the jurisdiction of the said "Courts at *Fort William*, *Madras*, and *Bombay* respec-"tively, and it is expedient, that such doubts should be "removed;" Be it further enacted and declared, that all persons whosoever, being natives of *India*, who have been, now are, or hereafter may be employed by or in the service of his Majesty, the said United Company, or of any of his Majesty's subjects, were, and are, and shall be subject and amenable to all provincial Courts of competent jurisdiction, for all crimes and misdemeanors, and in all actions and suits whatsoever, of which such Courts respectively could take cognizance, if the persons having committed such crimes or misdemeanors, or against whom the causes of such actions or suits shall have arisen, had not been employed by, or had not been in the service of his Majesty, or the said United Company, or any of his Majesty's subjects; any law, usage, or practice to the contrary thereof, in any ways notwithstanding: Provided always, that nothing herein contained shall any wise oust the said Supreme Courts of Judicature, of *Fort William* and *Madras*, and the said Court of the Recorder of *Bombay* respectively, of any jurisdiction over any natives of *India*, which such Courts may now lawfully exercise; but such Supreme Courts of Judicature, of *Fort William* and *Madras*, and the said Court of the Recorder of *Bombay* respectively, as well as the provincial Courts herein referred to, according to their several jurisdictions, shall have a concurrent jurisdiction over natives of *India*, employed

Natives of India in the service of the King, the Company, or Subjects, to be subject to provincial Courts, civil and criminal.

Proviso not to affect the jurisdiction of the King's Courts.

(1) This clause is repealed by Act of the Government of India, No. 9, of 1836.

by or in the service of the said United Company, or any of his Majest'y subjects.

Admiralty jurisdiction of King's Courts to extend to all crimes committed on the high seas.

CX. " AND WHEREAS, the Courts established by the " said United Company, have no jurisdiction over crimes " maritime, and doubts have been entertained whether the " Admiralty jurisdiction of his Majesty's Courts at *Calcutta, Madras,* and *Bombay,* extends to any persons " but those who are amenable to their ordinary jurisdic- " tion; by reason whereof failures of justice may arise;" Be it therefore enacted, that it shall and may be lawful for his Majesty's Courts at *Calcutta, Madras,* and *Bombay,* exercising Admiralty jurisdiction, to take cognizances of all crimes perpetrated on the high seas, by any person or persons whatsoever, in as full and ample a manner as any other Court of Admiralty jurisdiction established by his Majesty's authority *in any colony or settlement whatsoever,* belonging to the Crown of the said United Kingdom. (1)

as amply as any such established in any Colony or Settlement of the Crown.

Advocate-General of the Company may file informations in the King's Courts, for debts, &c. accruing to his Majesty.

CXI. " AND WHEREAS, doubts have arisen whether " the Advocate-General or other principal law officer of " the said Company, at any of the said Company's pre- " sidencies, is by law authorized to exhibit to the respec- " tive Courts of Judicature at any of the said presiden- " cies for and on behalf of his Majesty, informations in " the nature of actions at law, or bills in equity, for or in " respect of any cause or causes of action, debts, dues, " demands, accounts, reckonings, sum or sums of money, " stores, goods, chattels, or any other matter, cause, or " thing whatsoever, which may have arisen or accrued, " or which may arise or accrue to his Majesty;" For remedy thereof, be it further enacted, that it shall and may be lawful to and for the Advocate-General, or other principal law officer of the said Company for the time being, at each of the said Company's presidencies respectively, for and on behalf of his Majesty, his heirs and successors, to exhibit to the respective Supreme Courts fo Judicature, at the said Company's presidencies of *Fort*

(1) See 33 G. 3, c. 52. § 166, *ante* 85, note (2).

William and *Madras*, or to the Recorder's Court at *Bombay*, or the Court of Judicature at *Prince of Wales' Island*, any information or informations in the nature of an action or actions at law, or of a bill or bills in equity, as occasion shall require, against any person or persons, residing within, or being amenable to the jurisdiction of the said Courts respectively, for or in respect of any cause or causes of action, debts, dues, demands, accounts, reckonings, sum or sums of money, stores, goods, chattels, or any other matter, cause, or thing whatsoever, as fully and effectually, to all intents and purposes, as his Majesty's Attorney-General for the time being, is by law authorized to exhibit any such information or informations in any of his Majesty's Courts of law or equity in this realm; and that thereupon such proceedings shall be had, as far as the circumstances of the case, and the course and practice of the said Courts of Judicature, at the said several presidencies will admit, as are had upon any such informations exhibited by his Majesty's Attorney-General, in any of his Majesty's Courts of law or equity in this realm.

Justices of the peace may qualify by taking the oaths in any Court of Justice in the provinces.

CXII. "AND WHEREAS, great inconvenience has arisen "from requiring the Civil Servants of the said United "Company, and other persons stationed at a distance from "the presidencies, to attend and take the oaths in the "Courts of Oyer and Terminer of the said presidencies, "as prescribed by the said Act of the Parliament of *Great* "*Britain*, of the thirty-third year of his Majesty's reign;" Be it therefore enacted, that all persons who shall be nominated and appointed in any such commissions of the Peace, as are in the said act mentioned, shall be capable of acting as Justices of the Peace in every respect, according to the tenor of such commissions upon taking and subscribing in any civil or criminal Courts of Justice, (1) within the provinces in and for which any such commission shall have issued before any other Justice of the Peace, the like oaths as are appointed by the said act to be taken in the Court of Oyer and Terminer of the

(1) See 33 G. 3, c. 52, § 152, *ante* 81.

province or presidency for which such persons shall be appointed to act as Justices of the Peace; and the subscriptions of such persons to the said oaths, shall be deposited and kept with the records of the Courts of Justice, in which the said oaths shall have been administered.

The provincial Courts of the highest jurisdiction, may arrest on civil or criminal process within the limits of Calcutta, &c. notwithstanding the jurisdiction of King's Courts.

CXIII. "AND WHEREAS, it is expedient that the Sudder Dewanny Adawlut and Nizamut Adawlut, or other provincial Courts, however denominated, exercising the highest jurisdiction within the provinces respectively, subject to the Governments of *Fort William, Fort Saint George,* and *Bombay,* should have power and authority to execute process of arrest, either civil or criminal, within the towns of *Calcutta* and *Madras,* and the town and island of *Bombay,* notwithstanding the jurisdiction of his Majesty's Courts, established at those places respectively;" Be it therefore enacted, that it shall and may be lawful for the said Court of Sudder Dewanny and Nizamut Adawlut, or other provincial Courts aforesaid, to execute or cause to be executed, upon all persons, subject to the jurisdiction of such Courts respectively, all manner of lawful process of arrest, within the respective limits of the towns of *Calcutta* and *Madras,* and of the town and island of *Bombay,* in the same manner as the said Courts respectively may, by virtue of any power, now vested or hereafter to be vested in them, lawfully execute, or cause to be executed such process in any place situate without the said limits; any act, charter, or other matter or thing whatsoever, to the contrary notwithstanding: Provided always, that all such process which shall be executed within the limits aforesaid, shall be in writing, and shall have under-written or indorsed thereon, or otherwise annexed thereto, a translation thereof, or of the substance thereof, in the English language and character, signed by one of the Judges of the Court, from whence the same shall issue.

Process to be in writing with an English translation, and signed by a Judge.

Government to carry sentences of transportation into execution; but natives not to be transported beyond

CXXI. AND BE IT FURTHER ENACTED, that the Governments of the said presidencies and settlements respectively shall, and they are hereby required, to take order for the due performance of all sentences of transportation pronounced by any of the said Courts, under and by

virtue of this act: Provided always, that it shall not be lawful for any such Court to order the transportation of any person being a native of *India*, and not born of European parents, to any part beyond the seas, situated more than thirty degrees north, or twenty-five degrees south of the line. (1)

a certain distance.

CXXII. AND BE IT FURTHER ENACTED, that if any person or persons whomsoever shall be convicted of making a false oath, touching any of the matters directed or required by this act, to be testified on oath, such person or persons so convicted as aforesaid, shall be deemed guilty of perjury, and shall be liable to the pains and penalties to which persons guilty of perjury are liable by any law in force, in that part of the said United Kingdom called *England;* and if any person shall corruptly procure or suborn any other person or persons to swear falsely in any such oath, such person, being duly convicted of such procuring and suborning, shall for every such offence incur and suffer such penalties, forfeitures, pains, and disabilities, as persons convicted of perjury are respectively liable unto, by any law in force in the said part of the United Kingdom called *England.*

Persons taking false oaths, in regard to any matters in this act guilty of perjury: and persons suborning liable to the penalties of perjury, according to the law of England.

CXXIII. AND BE IT FURTHER ENACTED, that if any suit or action shall be brought or commenced against the said United Company, or any of their servants, or any person or persons acting by their authority, for the recovery of any costs or damages for the unlawful taking, arresting, seizing, imprisoning, sending, or bringing into the United Kingdom, of any person or persons found in the *East Indies,* or other parts aforesaid, within the limits of the said Company's Charter, or as not being authorized to reside or traffic there, the defendant or defendants to such suit or action may plead the general issue, and give the special matter in evidence for his or their defence; and the proof

In actions for unlawful arresting of persons found in the East Indies.

The defendant may plead the general issue.

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(1) This section is not expressly repealed by § 126. 9 G. 4. c. 74, but the previous secs. 114, &c. of this Statute, as respects the Queen's Courts, relating to the stealing of choses in action, &c. are

See also Act of the Government of India, No. 28, of 1838, as to transportation for perjury.

Proof to lie on the plaintiff.

shall lie on the plaintiff or plaintiffs upon the trial of the issue, to shew that, at the time or times of arresting or seizing such person or persons respectively for the causes aforesaid, in the manner in which such arresting shall be laid or charged to have been done in or by the declaration or declarations in such suits or actions, the person or persons so arrested was or were in the military or marine service of his Majesty, his heirs or successors, or was or were under covenant to serve the said Company in *India*, or was or were duly possessed of a licence or licences, certificate or certificates in writing, authorizing him or them to go to or reside and traffic in the *East Indies*, or parts aforesaid, or that the person or persons not being in his Majesty's service, was or were at the time or times of his or their being so seized or arrested, entitled or authorized, by the stipulation of such covenants, licences, or certificates respectively, to remain and continue in *India* or other the parts aforesaid ; and in failure of such proof, the plaintiff or plaintiffs shall become nonsuited ; and in such case, or any other cases wherein the plaintiff or plaintiffs shall become nonsuited, or wherein judgment shall be given against such plaintiff or plaintiffs upon demurrer, or where a verdict shall pass for the defendant or defendants, he or they shall have treble costs awarded to be paid by the respective plaintiff or plaintiffs in such suit or action ; any law, statute, or provision to the contrary notwithstanding.

Treble costs.

Limitation of suits, as to this act.

CXXIV. AND BE IT FURTHER ENACTED, that all suits and prosecutions for any thing done under or by virtue of this act, shall be commenced within the space of three years, after the cause of complaint shall have arisen ; or being done in the United Kingdom, in the absence of any person beyond sea aggrieved thereby, then within the space of three years next after the return of such person to the United Kingdom.

" *An* Act *to amend so much of an act of the thirty-*
" *third year of his present Majesty, as relates to*
" *fixing* the limits *of the towns of* Calcutta, Madras,
" *and* Bombay; *and also so much of an act of the*
" *thirty-ninth and fortieth year of his present Ma-*
" *jesty, as relates to granting* Letters *of* Administra-
" tion *to the effects of persons dying intestate within*
" *the several presidencies in the* East Indies, *to the*
" Registrar *of the Ecclesiastical Courts; and to en-*
" *able the Governor in Council of the said presiden-*
" *cies to remove persons not being* British *subjects;*
" *and to make provision for the Judges in the* East
" Indies *in certain cases.*"

[14*th June* 1815.]

" WHEREAS by an Act of the Parliament of *Great*
" *Britain*, made and passed in the *thirty-third* year of
" his present Majesty's reign, intituled "*An act for*
" *continuing in the* East India *Company, for a further*
" *term, the possession of the* British *territories in* India,
" *together with their exclusive trade, under certain*
" *limitations; for establishing further regulations for*
" *the Government of the said territories, and the better*
" *administration of justice within the same; for ap-*
" *propriating to certain uses the revenues and profits*
" *of the said Company; and for making provision for*
" *the good order and Government of the towns of* Cal-
" cutta, Madras, *and* Bombay;" It was, amongst other
" things, enacted, that if any question should arise touch-
" ing or concerning the true limits and extent of the towns
" and factories of *Calcutta, Madras,* and *Bombay* res-
" pectively, or any of them, the same should be inquired
" into by the Governor-General in Council at Fort Wil-
" liam, in respect to the limits and extent of *Calcutta,*

Recite 33 G. 3. c. 52.

as to the limits of Calcutta, &c.

§ 159.

" and by the Governor in Council, at Fort Saint George, " in respect to the limits and extent of *Madras*, and the " Governor in Council at Bombay, in respect to the town " of *Bombay*; and that such limits as the said respective " Governments by order in Council, (1) should declare and " prescribe to be the limits of the said towns and factories " respectively, should be held, deemed, and taken in law " as the true limits of the same, any custom or usage to " the contrary notwithstanding; and whereas, by reason " of the increase of the population of the towns of *Calcutta*, " *Madras*, and *Bombay*, it is expedient, that the " several Governments of *Fort William*, *Fort Saint* " *George*, and *Bombay*, in the *East Indies*, should be fur- " ther empowered, in manner hereinafter mentioned, to " extend from time to time the limits of the said several " towns;" May it therefore please your Majesty, that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall and may be lawful to and for the Governor-General in Council at Fort William in Bengal, from time to time, as circumstances shall in their judgment require, to extend the limits of the town of *Calcutta*; and to and for the Governor in Council at Fort Saint George, from time to time, as circumstances shall in their judgment require, to extend the limits of the town of *Madras*; and to and for the Governor in Council at Bombay, from time to time, as circumstances shall in their judgment require, to extend the limits of the town of *Bombay*; and that such extended limits as the said respective Governments shall, from time to time, in and by their respective orders in Council, or by their regulations, declare and prescribe as aforesaid to be the limits of the said towns respectively, shall, from the time of publishing such orders in Council, or regulations by Proclamation, (1) at the respective presidencies,

Authorizes the Governor-General, &c. to extend the limits of the towns of Calcutta, Madras, and Bombay.

(1) See 33 G. 3, c. 52. § 159, and *ante* 88, note (2), and see Proclamation fixing the limits of Calcutta, issued 16th September 1794, Appendix. It appears that no other Proclamation has been since issued.

be held, deemed, and taken, as and for the true limits of the same; and from time to time, as any extension shall be made thereof, all jurisdictions, powers, and authorities, which by virtue of any act or acts of Parliament, or any charter or charters, or any law or usage, shall or may be bounded or regulated by the limits of the said towns respectively, shall thenceforth be bounded and regulated by the limits of the said towns respectively, as they shall be declared and prescribed, from time to time in manner hereinbefore mentioned, any custom, law, or usage to the contrary notwithstanding: Provided always, that no order in Council or regulation hereafter to be made, and declaring or prescribing the limits of any of the said towns, shall be valid or effectual, until it shall have been sanctioned, or shall have been authorized to be made and passed by the Court of Directors of the United Company of Merchants of England trading to the *East Indies*, with the approbation of the Board of Commissioners for the affairs of *India*.

Proviso.

II. "AND WHEREAS, by an act passed in the "thirty-ninth and fortieth year of the reign of his present "Majesty, intituled *An act for establishing further "regulations for the Government of the* British "*territories in* India, *and for the better adminis-"tration of justice within the same*, it was enacted, "among other things, that whenever any *British* sub-"ject should die intestate, within either of the presiden-"cies of *Fort William*, *Fort Saint George*, or *Bom-"bay*, or the territories subordinate or to become "subordinate thereto, and on return of the citation to "be issued from the proper Ecclesiastical Court, no next "of kin or creditor should appear and make out their claim "to the administration of the effects of the intestate to the "satisfaction of the said Court, it should and might be "lawful for the Registrar of such Court, and he was there-"by required to apply for, and such Court was thereby "directed to grant letters *ad colligenda*, or of adminis-"tration, to such Registrar, in manner as the said act "set forth; And whereas the said act doth not expressly "provide for the cases of executors or administrations, or

Recital of 39 & 40 G. 3. c. 79. as to the grant of administration to the Registrar.

Which does not provide for cases of Executors absent.

"persons entitled to administration, as hereinafter mentioned, not resident within the jurisdiction of such Courts, "who may have appointed attornies resident or being "therein; and it hath been doubted whether the said "Courts were not required, under the said act, to grant "letters *ad colligenda*, or of administration, to their Registrars, in preference to attornies so appointed; and it "is fit that such doubts be removed;" Be it therefore enacted and declared, that when the executor or administrator lawfully appointed, or the person entitled to administration as next of kin or residuary legatee with the will annexed, of any person deceased, whose effects shall be subject to the jurisdiction of any of the said Courts in respect to the granting of administration, not being resident within the jurisdiction of such Court, shall have appointed, or shall hereafter appoint, either by power of attorney under seal, or by any other sufficient authority, to be shewn to the satisfaction of the said Court, any person or persons resident or being within such jurisdiction to act for such executor or administrator, or person entitled to administration as aforesaid, in collecting or administering in any manner the effects of the deceased, the person or persons so appointed, shall be entitled to obtain letters *ad colligenda*, or of administration, either general or special, as the tenor of such authority and the nature of the case may require, preferably to the Registrar of such Court, and all other persons to whom such executor or administrator, or persons entitled as aforesaid would have had a preferable claim, if personally resident within the jurisdiction of the said Court.

Enacts that letters of administration are to be granted to the attornies of absent executors.

III. AND BE IT FURTHER ENACTED, that where any such letters *ad collingenda*, or of administration, shall have been granted to the Registrar of such Court, and application shall be afterwards made by any person or persons so appointed as aforesaid, for the revocation thereof, in order to grant other letters to such person or persons, the letters so granted to such Registrar, shall be revoked, unless it shall appear to the said Court, that there has been unreasonable delay, either in the transmission of the

And administration to Registrar to be revoked, unless it shall appear that there has been unnecessary delay.

authority under which such application is made, or in making such application: Provided always, that when any letters *ad collingenda,* or of administration, shall have been actually granted to the Registrar of any such Court, by virtue of the act hereinbefore recited, and shall be revoked on the application of such attorney or attornies as aforesaid, it shall be lawful for such Court, if they shall think fit, to direct that the whole or part of any commission, in respect to the administration of assets which may arise or become due by virtue of any reasonable custom, obtaining within the jurisdiction of such Court, shall be allowed to such Registrar out of any assets which may have come to his hands, regard being had to the trouble and responsibility actually incurred, and to the service rendered by the said Registrar in the collection of such assets: Provided also, that nothing in this act contained, shall be construed to render necessary the taking out of letters *ad colligenda,* or of administration, from any of the Courts aforesaid, by any such attorney or attornies, otherwise than it would have been if this act had not been made; and that no claim or right to any such commission in respect of administration of effects as aforesaid, shall be deemed to accrue to any such attorney or attornies by reason of letters *ad collingenda,* or administration, taken out by him or them in virtue of such authority as aforesaid, nor any other or further commission than would have been payable to him or them as agents, either according to the usual and reasonable rates of such an agency, or by special agreement.

Proviso.

Proviso, that attorney not obliged to apply.

IV. PROVIDED ALSO, and be it further enacted, that this act shall not, nor shall any thing herein contained, in any wise prejudice or effect the rights, claims, actions, suits, or appeals of any person or persons being entitled or claiming to be entitled, either as principal or principals, attorney or attornies, to the probate or probates of any will or wills, codicil or codicils, or letters *ad colligenda,* or of administration, of the goods, chattels, and effects of any person or persons who shall have died before the passing of this act, nor the rights, claims, actions, suits, or appeals of any person or persons claiming or suing, or to claim or

Not to affect the rights of persons entitled to probates of wills or administration of effects of persons deceased before the passing of the act, &c.

sue for the recal or repeal of any letters *ad colligenda*, or of administration granted of the goods, chattels, or effects of any person or persons who shall have died before the passing of this act, which may have been or shall be granted to any such Registrar as hereinbefore mentioned; nor to the rights, claims, actions, suits, or appeals of any person or persons claiming or to claim, as executors, legatees, or next of kin of any person or persons who shall have died before the passing of this act, in any way relating to the goods, chattels, property, estate, or effects of such deceased person or persons, or to the transactions, acts, deeds, neglects, defaults, intermeddlings, or accounts of any such Registrar, relating to any such goods, chattels, property, estate, or effects, or under or by pretence of any letters *ad colligenda*, or of administration, which may have been granted to him; nor in any way to entitle any such Registrar to any commission, compensation, or allowance in respect of any thing done or to be done by him, in relation to the goods, chattels, debts, credits, estate, or effects, of any person or persons who shall have died before the passing of this act, which he would not have been entitled to, if this act had not been passed; but, every person being entitled to or claiming any such probate or probates, letters *ad colligenda*, or of administration, or to have any such letter *ad colligenda*, or of administration, recalled or repealed, or having or being entitled to, or claiming or to claim any such cause or causes of action, suit, or appeal, shall be entitled thereto, and all benefit and advantage thereof, and to prosecute and carry on the same, in the same manner, as he, she, or they would have been entitled, if this act had not been passed.

Registrar to enter in a book separate accounts of each estate, and of all securities for money, &c.

V. AND BE IT FURTHER ENACTED, that in all cases in which the Registrar of any of the said Courts shall be appointed administrator under the aforesaid act, besides filing an inventory and account-current according to the tenor of the administration bond, and the usual course of the Ecclesiastical Court, he shall enter into a book, to be kept by him for that purpose, separate and distinct accounts of each estate, and of all such sums of money, bonds, and other securities for money, goods, effects, and things,

as shall come to his hands, or to the hands of any persons employed by him, or in trust for him, by virtue of any letters *ad colligenda*, or of administration, granted to him under the authority of the said act, and likewise of all payments made by him for or on account of the said estates, and of all debts, due by or to the same, specifying the dates of such receipts and payments respectively; which said book shall be kept in the Registrar's office, and shall be open for the inspection of all such persons, practitioners in the said Courts or others, as may have occasion to inspect the same, at office hours, paying such reasonable fee as may be fixed therefore by the said Courts, and no more; and the said Registrars shall, twice in every year, that is, on the first day of March and on the twenty-second day of October, or on the first day after those days on which their respective Courts shall be sitting, exhibit and deliver in open Court, a true and perfect schedule of all sums of money, bonds, or other securities, received on account of each estate remaining under their charge, together with the payments made thereout, and the balances; and also of all administrations whereof the balances shall have been paid over to the persons entitled to the same, since the period of exhibiting the last schedule, specifying the amount of such balances, and the persons to whom paid; which schedules shall be filed of record in the said Courts; and shall, within fourteen days afterwards, be published in the gazettes of the presidencies within which such Courts are respectively situated, by the said Registrar, who shall likewise cause copies thereof, in triplicate, to be delivered to the Chief Secretary at such presidency, and the same shall be transmitted by the respective Governments at such presidencies, to the Court of Directors of the *East India* Company, who, upon the receipt thereof, shall cause the same to be published in the *London Gazette*.

Registrars to exhibit half-yearly schedules of monies, &c. received on account of estates, and balances, and to whom paid.

To be published in the Gazettes and delivered to Cheif Secretary—

To be transmitted to Court of Directors to be published in the *London Gazette*.

IX. AND BE IT FURTHER ENACTED, that no action or suit shall be commenced against the said United Company, or any of their servants, or any person or persons whomsoever, for any thing done in pursuance or under colour of this act, until twenty days' notice shall have been given to the said Company, or to the person or persons respectively,

Limitation of actions under this Statute.

against whom the same is to be brought, or after a sufficient satisfaction or tender thereof shall have been made to the party or parties aggrieved, nor after three years next after the cause of complaint shall have arisen; and the defendant or defendants in such action or suit shall and may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear to be so done, or that a sufficient satisfaction or tender thereof hath been made before the commencement of such action or suit, or that such action or suit hath been commenced after the time limited for bringing the same, or in any other manner than as directed by this act, the plaintiff or plaintiffs shall become nonsuited; and in such case, or in any other cases wherein the plaintiff or plaintiffs shall become nonsuited, or discontinue his or their action or suit after the defendant or defendants shall have appeared, or wherein judgment shall be given against such plaintiff or plaintiffs upon demurrer, or objection in nature of a demurrer, or where a verdict, or judgment in nature of a verdict, shall pass for the defendant or defendants, he or they shall have treble costs awarded, to be paid by the respective plaintiff or plaintiffs in such action or suit.

Defendant may plead the general issue.

Treble costs.

STAT. 58 GEO. 3. CAP. 84.

" *An* Act *to remove doubts as to the validity of certain* " Marriages, *had and solemnized within the* British " *territories in* India."

[5*th June* 1818.]

" WHEREAS doubts have arisen concerning the vali- " dity of marriages which have been had and solemnized " within the *British* territories in *India,* by ordained mi- " nisters of the Church of *Scotland,* as by law established: " And whereas it is expedient that such doubts should be " quieted, and that the law respecting such marriages " should be declared for the future;" Be it declared and enacted, and it is hereby declared and enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all marriages heretofore had and solemnized, or which shall be had and solemnized, within the said territories in *India,* before the thirty-first day of December now next ensuing, by ordained ministers of the Church of *Scotland,* as by law established, shall be, and shall be adjudged, esteemed, and taken to have been, and to be, of the same and no other force and effect as if such marriages had been had and solemnized by clergymen of the Church of *England,* according to the rites and ceremonies of the Church of *England;* and that from and after the said thirty-first day of December now next ensuing, all marriages between persons, both or one of such persons being members or member of, or holding communion with the Church of *Scotland,* and making a declaration to the effect hereinafter mentioned, which marriages shall be had and solemnized within the *British* territories

Marriages solemnized in India before 31st December, by ministers of the Church of Scotland, to be of the same force as if solemnized by clergymen of the Church of England; and after that period, marriages between persons, one or both of the Church of Scotland, by ministers of that communion, and appointed by the E. I. Company, valid.

in *India*, by ordained ministers of the Church of *Scotland*, as by law established, and appointed by the United Company of Merchants of *England* trading to the *East Indies*, to officiate as chaplains with the said territories, shall be, and shall be adjudged, esteemed, and taken to be, of the same and no other force and effect, as if such marriages were had and solemnized by clergymen of the Church of *England*, according to the rites and ceremonies of the Church of *England*: Provided always, that from and after the said thirty-first day of December, no such marriage as aforesaid, shall be had and solemnized, till both or one of such persons, as the case may be, shall have signed a declaration in writing, in duplicate, stating that they, or he or she, as the case may be, are or is members or member of, or holding communion with the Church of *Scotland*, as by law established.

Declaration to be signed by parties.

II. AND BE IT FURTHER ENACTED, that the minister by whom such marriage shall be solemnized, shall, immediately upon the solemnization thereof, certify such marriage by a writing under his hand, in duplicate, subjoined to or endorsed upon the declaration in duplicate hereinbefore mentioned, specifying in such certificate the names and descriptions of the parties between whom, and of the witnesses in whose presence the said marriage has been had and solemnized, and the time and place of the celebration of the same; and such certificate in duplicate, shall be also signed forthwith by the parties entering into such marriage, and by the witnesses to the same; and the minister officiating, shall deliver one duplicate of such declaration and certificate to the persons married, or to one of them, and shall transmit the other duplicate of such declaration and certificate, to the Chief Secretary of Goverment, at the presidency, within which such marriage shall have been had and solemnized. (1)

Ministers to certify marriage, and deliver duplicate of certificate signed by parties and witnesses to the parties and transmit another to Secretary of the presidency.

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(1) This Statute confirms all marriages which had been celebrated by ministers of the Church of Scotland without reference to the religion of the parties. It renders valid future marriages thus celebrated, *both* or one of the parties being members of, or holding communion with the Church of Scotland. As to the validity of marriages in India and the colonies, see a learned note of Mr. Jacob, the editor of Roper's law of husband and wife, vol. 2, Addenda, p. 445.

"*An* Act *to enable the examination of* Witnesses *to be* "*taken in* India *in support of Bills of* Divorce, *on* "*account of Adultery committed in* India."

[24*th July* 1820.]

Speaker may issue his warrant for the examination of witnesses in India, in cases of bills of divorce.

"WHEREAS much inconvenience hath arisen to his "Majesty's subjects residing in *India*, and petitioning "either house of Parliament, for bills for the dissolution of "marriages, by reason of acts of adultery committed in "*India*, from the difficulty of producing in *England* the "evidence necessary to substantiate the allegations of such "bills; and whereas by reason of the religious scruples "of several of the natives of *India*, it is impossible to pre-"vail upon them to come to *England* for the purpose of "being examined as witnesses, at the bar of either house of "Parliament; and whereas, for remedy of the said incon-"venience, it is expedient that provision shall be made "for examining witnesses in *India*, and for duly transmit-"ting their depositions to such houses of Parliament;" Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whensoever and as often as either house of Parliament, upon the petition of any party praying for a bill for the dissolution of any marriage, and stating that the witnesses necessary to substantiate the allegations of such bill are resident in *India*, shall see cause to direct that the examinations of such witnesses shall be taken in *India*, the speaker of such house of Parliament shall thereupon issue his warrant or warrants to the Judges of the Supreme

Court of Judicature, of the presidency of *Calcutta*, the Judges of the Supreme Court of Judicature, of the presidency of *Madras*, the Recorder of the presidency of *Bombay*, or the Judges of the Supreme Court of Judicature, of the island of *Ceylon* respectively, accordingly as the witnesses proposed to be examined, shall be resident within any one or more of the said presidencies, or the said island, for the examination upon oath of all such witnesses as shall be produced before them, touching the allegations of such bill, and touching any notices or other matters which shall in such warrant be specified; and that in all cases where such warrants shall be so issued, duplicates of such warrants, together with copies of such bill, shall be transmitted by different ships, at the desire of the agent of the party or parties soliciting such bill, to the persons to whom such warrants shall be directed.

Duplicate of warrant to be transmitted.

II. AND BE IT ENACTED, that in all cases immediately upon the receipt of such warrant or warrants, the Judges or Recorder to whom the same shall have been directed, shall appoint some time or times, with all convenient speed, for the examination of witnesses, and receiving other proofs touching the allegations of such bill, and in opposition thereto, and touching such notices and other matters as shall in such warrant have been specified, and in the mean time shall cause such public notice to be given of such examination, and shall issue such summons or other process, as may be requisite for the attendance of witnesses, and of the agents or counsel of all or any of the parties respectively, and of such other witnesses as after mentioned, and to adjourn from time to time, as occasion may require; and such examinations as aforesaid, shall be then and there openly and publicly taken *vivâ voce* upon the respective oaths of witnesses, and the oaths of skilful interpreters, administered according to the forms of their several religions, and shall, by some sworn officer of the Court, be reduced into writing, and that two copies thereof shall be made; and that the Judges or Recorder, before whom such examination shall have been taken, shall certify the same under the official seal of their several Courts, together with a declaration of such Judges or Recorder, that such examinations have in their or his judgment been fairly

Judges in India, on receipt of such warrant, to appoint time to examine witnesses.

Notice thereof.

Examinations how to be taken.

Two copies thereof to be certified and transmitted to the Speaker of either house of Parliament.

and properly conducted, and that all such witnesses had been produced as were fit to be produced, for the purpose of ascertaining the whole truth, so far as the attendance of such witnesses could be reasonably obtained; and shall transmit the same by different ships to the speaker of either house of Parliament, under whose warrant such examination shall have been taken; and every such examination so returned to the speaker of either house of Parliament as aforesaid, shall be competent and admissible evidence, and shall be allowed and read in both houses of Parliament, or either of them respectively, as occasion may require; any law or usage to the contrary notwithstanding.

Examination returned to be evidence.

III. AND BE IT FURTHER ENACTED, that it shall and may be lawful for such Judges or Recorder, upon any such examination, to ask any such questions of any witness who shall be produced before them or him, and to require such further witnesses resident within such presidency or island respectively, to be produced, as shall appear fit and necessary for the due investigation of the allegations of such bill, or of any other matters in such warrants specified; and to allow such attendance by counsel, and such cross-examination of witnesses, as shall be deemed by such Judges and Recorder to be fit and proper for the purpose of such investigation, and for such purpose, if necessary, to name some proper person or persons to attend as counsel and agent in opposition to such bill, and to procure any evidence which may be necessary for the purpose of such opposition, to the end that a full and fair disclosure may be made of all the facts and circumstances of the case.

Judges may ask such further questions, and require such further witnesses to be produced as shall be necessary; and may name counsel, &c. to oppose the Bill.

IV. "AND WHEREAS, by the usage and custom of "Parliament, no proceedings by bill in Parliament have "continuance from one session to another; and whereas "it would be impracticable that the examination taken "upon such warrant as aforesaid, could ever be returned "within the ordinary length of a session of Parliament;" Be it enacted by the authority aforesaid, that from and after the passing of this act, no proceeding in Parliament touching any bill for the dissolution of marriage, wherein

Proceedings not to be discontinued by prorogation, &c. of Parliament.

such warrant as aforesaid shall have been issued, shall be discontinued by any prorogation or dissolution of Parliament, until the examination therein directed shall have been returned ; but that such proceedings may be resumed and proceeded upon in a subsequent session, or in a subsequent Parliament, in either house of Parliament, in like manner, and to all intents and purposes as they might have been in the course of one and the same session, any law, usage, or custom to the contrary notwithstanding.

STAT. 4 GEO. 4. CAP. 81.

" *An* Act *to consolidate and amend the Laws for*
" *punishing Mutiny and Desertion of* Officers *and*
" Soldiers *in the Service of the* East India *Company,*
" *and to authorize Soldiers and Sailors in the* East
" Indies, *to send and receive Letters at a reduced Rate*
" *of Postage.*"

[18*th July* 1823.]

SEC. II. AND BE IT FURTHER ENACTED, that it shall and may be lawful for the general or other officer commanding in chief the forces of or belonging to the presidencies of *Fort William, Fort Saint George,* and *Bombay* respectively, for the time being, having authority to appoint courts-martial, to appoint general courts-martial, and to issue his warrant to any general or other officer, having the command of a body of troops of his Majesty, or of the said Company, empowering them respectively to appoint general courts-martial, as occasion may require, to be holden within the territories of any foreign State, or in any country under the protection of his Majesty or the said United Company, or at any place, other than *Prince of Wales' Island,* in the territories under the Government of the said United Company, and situated above one hundred and twenty miles from the said presidencies respectively, for the trial of any person under his command (1) accused of having committed wilful murder, theft, robbery, rape, or any other crime which is capital by the laws of *England,* or of having used violence, or committed any offence against the person or property of any subject of his

Persons, under command of officer commanding in chief, accused of capital and other crimes, or committed any offence against the person or property of any subject, &c. 120 miles from the presidencies, may be tried by court-martial.

(1) See § 7, *post,* as to desertion.

Majesty, or any other person entitled to his Majesty's protection, or the protection of the respective Governments of the *East India* Company, or of any State in alliance with the said Company, within the territories of any foreign State, or in any country under the protection of his Majesty or the said United Company, or at any place, other than *Prince of Wales' Island,* in the territories under the Government of the said United Company, situate above one hundred and twenty miles from the said presidencies respectively; and the persons accused, if found guilty, shall suffer death, (1) or be liable to transportation for life, or for a term of years, or to such other punishments, according to the nature and degree of their respective offences, as by the sentence of any such general courts-martial shall be awarded: Provided always, that any person so tried shall not be liable to be tried for the same offence by any other Court whatsoever.

Persons liable to be tried by court martial, may be apprehended, and delivered over to regiment.

III. AND BE IT FURTHER ENACTED, that if any person liable to be tried by a court-martial for any such offence alleged to have been committed within the territories of any foreign State, or in any country under the protection of his Majesty or the said United Company, or at any place, other than *Prince of Wales' Island,* in the territories or under the Government of the said United Company, situate above one hundred and twenty miles from the said presidencies of *Fort William, Fort Saint George,* and *Bombay* respectively, and for which no proceeding shall have been commenced in any ordinary Court of competent civil or criminal jurisdiction, shall be apprehended by the authority of or brought before any Magistrate for any such offence, it shall and may be lawful for such Magistrate, and he is hereby required, to deliver over such accused person to the commanding officer of the regiment, corps, or detachment, to which such accused person shall belong, or to the commanding officer of the nearest military station, for the purpose of his being tried by a court-martial for such offence, as hereinbefore is provided in that behalf.

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(1) See § 7, *post,* as to desertion, and § 8, as to commutation of capital sentences.

IV. PROVIDED ALWAYS, and be it enacted, that in all and every case wherein a sentence of death or transportation shall be pronounced for any such capital offence, committed at any place situate above one hundred and twenty miles from the presidencies of *Fort William, Fort Saint George*, and *Bombay* respectively, and being within the territories under the Government of the said United Company, such sentence shall not be carried into execution until confirmed by the general or other officer commanding at the presidency, with the concurrence of the Governor-General in Council, or Governor in Council of the presidency, in the territories subordinate to which such offenders shall have been tried.

Sentences not to be executed till confirmed by officer commanding in chief and approved by Governor in Council of presidency.

VII. AND BE IT FURTHER ENACTED AND DECLARED, that in case of any non-commissioned officer or soldier tried and convicted of desertion, wheresover the court-martial, which shall pass sentence upon such trial, shall not think the offence deserving of capital punishment, such court-martial may, instead of awarding a corporal punishment, adjudge the offender, according to the nature of his offence, if they shall think fit, to be transported as a felon for life, or for a certain term of years; and if such non-commissioned officer or soldier, having been adjudged to be transported as a felon, shall afterwards, without leave from the Governor or commanding officer of the place to which he shall have been transported, return into or be found at large without leave as aforesaid, or other lawful cause, within any part of his Majesty's dominions, or any of the possessions or territories which are or may be under the Government of the said United Company, other than the place to which he shall have been transported, before the expiration of the term limited by such sentence, and shall be convicted thereof in the ordinary course of law, every such person shall be deemed and adjudged guilty of felony, and shall suffer death as a felon, without the benefit of clergy. (1)

Transportation for desertion

Unduly returning, death.

(1) See § 1. *ante*, and § 8. *post*.

Power to officer commanding in chief at the presidency to which offender shall belong, of commuting death to transportation.

VIII. PROVIDED ALSO, and be it enacted, that in all cases wherein a capital punishment shall have been awarded by a court-martial, it shall be lawful for the officer commanding in chief the forces at the presidency to which the offender shall belong, and having power to appoint or authorize the appointment of such court-martial, instead of causing such sentence to be carried into execution, to order the offender to be transported as a felon for life, or for a certain term of years, as to the said officer commanding in chief may seem meet; and if the person so transported in pursuance of such order shall afterwards, without leave from the Governor or commanding officer of the place, to which he shall have been transported, return into or be found at large, without leave as aforesaid, or other lawful cause, within any part of his Majesty's dominions, or any of the possessions or territories which are or may be under the Government of the said Company, other than the place to which he shall have been transported, before the expiration of the term limited by such order, and shall be duly convicted thereof, he shall suffer death. (1)

Unduly returning, death.

Sentences of transportation to be notified by officer commanding in chief, &c. to Judge of Supreme Court.

XII. PROVIDED ALWAYS, and be it further enacted, that whenever any sentence of transportation, passed by any court-martial in the *East Indies*, or in the other possessions or territories which are or may be under the Government of the said Company, beyond the seas or in foreign parts, is to be carried into execution, or mercy shall be extended to any offender liable to the punishment of death by the sentence of any court-martial, upon condition of transportation, the same shall be notified in writing by the officer commanding in chief, or in the absence of the officer commanding in chief, then by the Adjutant-General for the time being, to some Judge of the Supreme Court of Judicature, of the presidency under which such offender shall serve; and thereupon such judge shall make an order for the transportation of such offender, upon the terms and for the time which shall be specified in such notification, and shall also make such other order or orders, and do all such other acts consequent upon

Proceedings by such Judge thereon.

(1) See §§ 1 and 7. *ante*.

the same, as any such Judge is authorized to make or do with respect to offenders ordered to be transported by sentence of the criminal courts of *India;* and the Governor in Council of such presidency, or Governors of such settlement, island, territory, or country respectively, shall, and they are hereby required to take order for the transportation of all such offenders accordingly; and all such orders and acts shall be obeyed and done in respect to such offenders, and shall have the like consequence, as in cases of persons convicted of crime and sentenced to be transported, or receiving pardon on condition of transportation; and every person so ordered to be transported, shall be subject respectively to all and every the provision and provisions made by law, and now in force concerning persons convicted of any crime and sentenced to be transported, or receiving pardon on condition of transportation.

Governor in Council to take order for transportation.

Effect of such orders and acts.

XIII. AND BE IT FURTHER ENACTED, that if any offender under sentence of death by a court-martial as aforesaid, shall obtain any such conditional remission of such sentence as aforesaid, all and every the laws now in force touching the escape of felons under sentence of death shall apply to such offender, and to all persons aiding, abetting, or assisting in any escape or intended escape of any such offender, or contriving any such escape, from the time when such order shall be made by such Judge as aforesaid, and during all the several proceedings which shall be had for the purposes aforesaid.

After such conditional remission of sentence, offenders subject to the law of escape of felons, &c.

XVII. AND BE IT FURTHER ENACTED, that if any officer or non-commissioned officer or soldier, shall be accused of any capital crime, or of any violence or offence against the person, estate, or property of any of his Majesty's subjects, or any other person entitled to his Majesty's protection, or to the protection of the respective Governments of the *East India* Company, or of any State in alliance with the said Company, which is punishable by known laws of the land, the Commanding Officer or officers of every regiment, troop, company, or party, is and are hereby required to use his and their utmost

Officers or soldiers accused of capital and other crimes, to be delivered to the civil magistrate.

endeavours to deliver over such accused person to the civil magistrate, and shall also be aiding and assisting to the officers of justice in the seizing and apprehending such offender, in order to bring him to trial; and if any such Commanding Officer shall wilfully neglect or refuse, upon application made to him for that purpose, to deliver over any such accused person to the civil magistrate, or to be aiding or assisting to the officers of justice in apprehending such offender, every such officer so offending, and being thereof convicted, upon any information or indictment in any of his Majesty's Courts of Record in *India*, shall be deemed and taken to be cashiered, and shall be utterly disabled to have or to hold any civil or military office or employment in the said United Company's service in the *East Indies*, provided a certificate of the said conviction be transmitted to the Judge Advocate-General of the army to which such offender shall belong: Provided always, that nothing herein contained, shall extend or be construed to extend, to require the delivery over to the civil magistrate of any such person accused of any offence, who shall have been tried for such offence by any court-martial in manner hereinbefore provided, in respect of offences committed within the territories of any foreign State, or in any country under the protection of his Majesty or the said United Company, or at any place in or out of the territories of the said United Company, situated above one hundred and twenty miles from the said presidencies of *Fort William*, *Fort Saint George*, and *Bombay* respectively, (1) or against whom any effectual proceeding shall have been taken, or ordered to be taken, for the purpose of bringing such person to trial by such court-martial as aforesaid: Provided also, that no person or persons, being acquitted or convicted of any capital crime, violence, or offence, by the civil magistrate, shall be liable to be punished by a court-martial for the same, otherwise than by cashiering.

Commanding officers refusing to deliver accused persons,

on conviction to be cashiered.

Proviso, not to extend to persons who have been tried by a court-martial.

And e converso.

The King to make Articles of War.

XXXIII. AND BE IT FURTHER ENACTED, that it shall and may be lawful to and for his Majesty, from time to

(1) See § 2, *ante*.

time to form, make, and establish Articles of war for the better Government of the said United Company's forces, and the same from time to time to vary, alter, and amend; which Articles of war shall be judicially taken notice of by all Judges, and in all Courts whatsoever.

Copy to be transmitted by Secretary at War to Judges, &c.

XXXIV. And for the more effectual notification thereof, to the several Judges and persons hereinafter mentioned, be it further enacted, that copies of all such Articles of war, printed by the King's printer, shall, from time to time, as soon as conveniently may be after the same shall have been made and established by his Majesty, be transmitted by his Majesty's Secretary at war for the time being, signed with his own hand and name, to the Judges of his Majesty's Superior Courts at *Westminster*, *Dublin*, *Edinburgh*, and in *India* respectively; and also to the Governors of his Majesty's colonies, plantations, and territories within the limits of the Charter of the said United Company.

Debts due by deceased officers, &c considered regimental debts, to be paid in preference to others.

XLIX. AND BE IT FURTHER ENACTED, that all sums of money due by deceased officers and soldiers, in respect of any military clothing, appointments, and equipment, or in respect of any quarters, or of any mess or regimental accounts, and all sums of money due to any agent or paymaster, or quartermaster or any other officer upon any such accounts, or on account of any advance made for any such purpose, shall be deemed and taken to be regimental debts, and shall be paid out of any arrears of pay or allowances, or out of any prize or bounty-money, or the equipage, goods, chattels, and effects of any officer or soldier dying while in the service of the said United Company, in preference to any other debts, claims, or demands whatsoever, upon the estate and effects of such officer or soldier; and if any doubt shall arise, as to whether any claim or demand made in relation to any officer or soldier, is a regimental debt or not, such question shall be decided and concluded by the order or certificate of the Military Secretary to the Government of the presidency, to which such officer or soldier shall have belonged; and all such payments shall be good and valid in law, and every person who shall make any such payment out of any such arrears

of pay, effects, or proceeds as aforesaid, under the provisions of this act, or in pursuance of any such order or certificate of such Military Secretary, or into whose hands any such money shall come, shall be and are hereby indemnified for and in respect of such payments, and all other acts, matters, and things done in pursuance of the provisions of this act, or of the order or certificate of the said Military Secretary, in relation to the distribution of such assets; any thing in any act or acts of Parliament, or law or laws, to the contrary notwithstanding.

Surplus to be paid to person entitled.

L. AND BE IT FURTHER ENACTED, that it shall be lawful for such Military Secretary, to cause all surplus which may remain, after satisfying such regimental debts as aforesaid, to be paid to the person or persons entitled thereto.

Regimental debts to be paid without probate of will, &c. being obtained.

LI. AND BE IT FURTHER ENACTED, that all such regimental debts shall and may be paid, without any probate of any will being obtained, or any letters of administration, or any confirmation of testament, or letters testamentary or dative, being taken out by any person, and the surplus only of such arrears of pay or allowances, prize, or bounty-money, equipage, goods, and chattels, or the proceeds thereof, shall be deemed the personal estate of the deceased, for the payment of any duty in respect of any probate, or of any letters of administration, or confirmation of testament, or letters testamentary or dative, or for the purpose of distribution as personal estate; and it shall be lawful for the said Military Secretary, to order and direct the payment or distribution of any such surplus, in any case in which the same shall not exceed two hundred sicca rupees, without any probate, or letters of administration, or confirmation of testament, or letters testamentary or dative, or payment of any duty of stamps, or upon legacies or otherwise; and it shall also be lawful for any paymaster or other person to issue any sum not exceeding the value of two hundred sicca rupees, which may be due to any officer deceased, or to the widow or relative of any officer deceased, or to the representative or representatives of any such officer's widow or relative in like manner, without any probate or letters of administration,

Surplus only deemed personal estate, and may be distributed without probate, &c. up to the amount herein mentioned.

or confirmation of testaments or letters, testamentary or dative, or payment of any duty of stamps, or upon legacies or otherwise, the same to be paid to the person who shall be notified by the said Military Secretary as aforesaid, as being entitled thereto; and all such payments respectively, shall be as valid and effectual, to all intents and purposes, as if the same had been made by or to any executor or administrator, or under the authority of any probate, or letters of administration, or confirmation of testament, letters testamentary or dative; any thing in any act or acts of Parliament, or law or laws, to the contrary notwithstanding.

No soldier liable to process, except for a criminal matter or a real debt, or other just cause of action amounting to 200 sicca rupees.

LV. "AND TO PREVENT, as far as may be, any unjust or "fraudulent arrests that may be made upon soldiers, where-"by the said United Company may be deprived of their "services;" It is hereby further enacted, that no person who is or shall be listed, or who shall list and enter himself in the Company's service as a soldier, shall be liable to be taken out of the Company's service, by any process or execution whatever, other than for some criminal matter, unless for a real debt or other just cause of action, and unless before the taking out of such process or execution, (not being for a criminal matter,) the plaintiff or plaintiffs therein, or some other person or persons on his or their behalf, shall make affidavit before one or more Judge or Judges of the Court of Records, or other Court out of which such process or execution shall issue, or before some person authorized to take affidavits in such courts, that to his or their knowledge the original sum justly due and owing to the plaintiff or plaintiffs from the defendant or defendants, in the action or cause of action on which such process shall issue, or the original debt for which such execution shall be sued out, amounts to the value of two hundred sicca rupees at the least, over and above all costs of suit in the same action, or in any other action on which the same shall be granted; a memorandum of which oath shall be marked on the back of such process or writ, for which memorandum or oath no fee shall be taken; and if any person shall nevertheless be arrested, contrary to the intent of this act, it shall and may be lawful for one or more Judge or Judges of such Court,

Proceedings on such arrest.

upon complaint thereof made by the party himself, or by any of his superior officers, to examine into the same by the oath of the parties or otherwise, and by warrant under his or their hand and seal, or hands and seals, to discharge such soldier so arrested, contrary to the intent of this act, without paying any fee or fees, upon due proof made before him or them, that such soldier so arrested was legally enlisted as a soldier in the Company's service, and arrested contrary to the intent of this act; and also to award to the party so complaining such costs as such Judge or Judges shall think reasonable, for the recovery whereof he shall have the like remedy, that the person who takes out the said execution might have had for his costs, or the plaintiff in the like action might have had for the recovery of his costs, in case judgment had been given for him with costs against the defendant in the said action.

Costs to party aggrieved.

LVI. "And to the end that honest creditors, who aim "only at the recovery of their just debts due to them from "persons entering into and enlisting in the Company's ser-"vice, may not be hindered from suing for the same, but, "on the contrary, may be assisted and forwarded in their "suits, and instead of an arrest, which may at once hurt "the service and occasion great expence and delay to them-"selves, may be enabled to proceed in a more easy and "cheap method;" Be it further enacted, that it may and shall be lawful to and for any plaintiff or plaintiffs, upon notice first given in writing of the cause of action to such person or persons so entered, or left at his or their last place of residence before such listing, to file a common appearance in any action to be brought for or upon account of any debt whatsoever, so as to entitle such plaintiff to proceed therein to judgment and outlawry, and to have an execution thereupon other than against the body or bodies of him or them so listed as aforesaid; this act, or any thing herein, or any former law or statute to the contrary notwithstanding.

Plaintiff in such action may file a common appearance to entitle him to judgment and execution other than against the body.

LVII. AND BE IT FURTHER ENACTED, that in all places where the said Company's forces now are or may be employed, or where any body of his Majesty's forces may be serving with the forces of the said Company, situate

Where troops are serving beyond the jurisdiction of the

beyond the jurisdiction of the Court of Requests established at the cities of *Calcutta, Madras,* and *Bombay* respectively, actions of debt, and all personal actions, against such officers, non-commissioned officers, or soldiers, all persons licenced to act as sutlers to any corps or detachment, or at any station or cantonment, or other persons amenable to the provisions of this act, or resident within the limits of a military cantonment, shall be cognizable before a Court of Requests, composed of military officers, *and not elsewhere:* provided the value in question shall not exceed four hundred sicca rupees, and that the defendant was a person of the above description when the cause of action arose; which Court the commanding officer of any station or cantonment is hereby authorized and empowered to convene, and the said Court shall, in all practicable cases, consist of five commissioned officers, and in no instance of less than three, and the president thereof shall not be under the rank of a captain; and every member, assisting at any such Court, before any proceedings to be had before it, shall take the following oath upon the Holy Evangelists; which oath shall be administered by the president of the Court to the other members thereof, and to the president by any member having first taken the said oath, (that is to say,) "I swear, that I will duly administer justice, according to the evidence, in the matter that shall be brought before me." "So help me GOD."

Courts of Requests, actions of debt not exceeding 400 sicca rupees, shall be cognizable before a Military Court.

And every witness before any such Court, shall be examined on oath, which such Courts are hereby authorized to administer, or if natives of the *East Indies,* on oath or solemn declaration, as the circumstances of the case may require; and it shall be competent for such Courts, upon finding any debt or damage due, either to award execution thereof generally, or to direct that the whole or any part thereof, shall be stopped, and paid over to the creditor, out of any pay or public money which may be coming to the debtor in the current or any future month; and in case the execution shall be awarded generally, the debt, if not paid forthwith, shall be levied by seizure and public sale of such of the debtor's goods, as may be found within the camp, garrison, or cantonment, under a written order of the commanding officer, grounded on the judgment of the Court;

Witnesses to be examined on oath.

Powers of such Court.

and the goods of the debtor, if found within the limits of the Company's garrison or cantonment to which the debtor shall belong at any subsequent time, shall be liable to be seized and sold in satisfaction of any remainder of such debt or damages; and if sufficient goods shall not be found within the limits of the camp, garrison, or cantonment, then any public money, or any sum not exceeding the half-pay accruing to the debtor, shall be stopped in liquidation of such debt or damage; and if such debtor shall not receive pay as an officer or soldier, or from any public department, but be a sutler, servant, or follower, he shall be arrested by like order of the commanding officer, and imprisoned in some convenient place within the military boundaries for the space of two months, unless the debt be sooner paid: Provided always, that from and after the time limited for the commencement of this act, so much of an act passed in the fifty-third year of the reign of his late Majesty King *George* the Third, intituled *An Act for continuing in the* East India *Company for a further term, the possession of the* British *territories in* India, *together with certain exclusive privileges for establishing further regulations for the Government of the said territories, and the better administration of justice within the same, and for regulating the trade to and from the places within the limits of the said Company's Charter,* as gives to magistrates the cognizances of debts due from officers or soldiers, being *British* subjects, to the natives of *India* resident without the jurisdiction of the Courts of Requests therein mentioned, shall be, and the same is, hereby repealed accordingly.

Repeals 53 G. c. 3. 155. § 106.

LX. AND BE IT DECLARED AND ENACTED, that all officers and persons who are or shall be commissioned or employed in the commissariat department, or as storekeepers, and all civil officers who are or shall be employed by or act under the ordnance, and who are or shall be placed under the command of any general or other officer, shall be, to all intents and purposes, liable to the provisions of this act, and to the same rules and articles of war, and the same penalties and punishments, as in case of the Company's other forces.

Officers, and persons, and civil officers, employed in the commissariat and ordnance, liable to this act.

LXII. PROVIDED ALWAYS, and be it further enacted, that nothing in this act contained, shall in any manner impeach or affect any matters enacted, or declared respecting officers or soldiers being natives of the *East Indies*, or other places within the limits of the said Company's Charter, contained in the said act, passed in the fifty-third year of his late Majesty, but that all such matters shall be of the same force, in respect of such native officers and soldiers, as if this act had not been made.

Proviso as to 53 G. 3. c. 155. relating to native troops.

LXV. AND BE IT FURTHER ENACTED, that if any action, bill, plaint, or suit shall be brought against any person or persons, for any act, matter, or thing to be acted or done in pursuance of this act, it shall and may be lawful to and for all every person or persons sued as aforesaid, to plead thereto the general issue, that he or they are not guilty, and to give this act and the special matter in evidence, on any trial to be held thereupon, and that the same was done in pursuance and by authority of this act; and if it shall appear so to have been done, the jury shall find for the defendant or defendants; and if the verdict shall pass with the said defendant or defendants in any such action, or the plaintiff or plaintiffs therein become nonsuited, or suffer any discontinuance thereof, that, in every such case, the Justice or Justices, or such other Judge, before whom the said matter shall be tried, shall, by force and virtue of this act, allow unto the defendant or defendants, his or their treble costs, which he or they shall have sustained, by reason of their wrongful vexation in defence of the said action or suit, for which the said defendant or defendants shall have the like remedy as in other cases where the costs, by the laws of the realm, are given to defendants.

In actions for executing act.

General issue may be pleaded.

Treble costs.

LXVI. AND BE IT FURTHER ENACTED, that every bill, plaint, action, or suit against any person or persons, for any act, matter, or thing to be acted or done, in pursuance of this act, or against any member or minister of a court-martial, in respect of any sentence of such court, or of any thing done by virtue or in pursuance of such sentence, shall be brought into the Court of Record at the presidency, under which such person is serving, or in the

Such actions to be brought in Courts of Record at presidency, or at Westminster.

Courts of Record at *Westminster*, and in no other Court whatsoever.

Penalties how recoverable.

LXIX. (1) AND BE IT FURTHER ENACTED, that all penalties by this act imposed, for persuading or procuring any soldier to desert, may and shall be sued for and be recoverable in his Majesty's Court of Record at the presidency, under which such offender shall be resident.

Limitation of actions.

LXX. PROVIDED ALWAYS, and be it further enacted, that no action shall be brought or prosecution carried on, by virtue of this act, for the penalties aforesaid, unless the same be commenced within six months after the offence is committed.

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(1) Secs. 67 and 68 provide for the punishment, before any Justice of the peace, of offences for concealing deserters, buying arms, &c. from soldiers, or persuading them to desert.

" *An* Act *to amend two Acts of the fifty-eighth year* " *of his late Majesty, for regulating the payment* " *of* Regimental Debts *and the* Distribution *of the* " Effects *of* Officers *and* Soldiers *dying in Service,* " *and the Receipt of Sums due to Soldiers; and of* " *the fourth year of his present Majesty, for pu-* " *nishing Mutiny and Desertion of Officers and Sol-* " *diers in the Service of the* East India *Company.*"

[22*d June* 1825.]

" WHEREAS an act was passed in the fifty-eighth " year of the reign of his late Majesty, King *George* the " Third, intituled " *An Act for regulating the payment* " *of regimental debts and the distribution of the* " *effects of officers and soldiers dying in service, and* " *the receipt of sums due to soldiers;*" And, whereas " by an act passed in the fourth year of the reign of his " present Majesty, intituled " *An Act to consolidate and* " *amend the laws for punishing mutiny and desertion* " *of officers and soldiers in the service of the* East " India *Company, and to authorize soldiers and sail-* " *ors in the* East Indies, *to send and receive letters at* " *a reduced rate of postage,*" and, *by certain articles of* " *war,* made in pursuance thereof, provision is made for the " care and application of the effects and credits of deceas- " ed officers and soldiers in the said Company's service; " And, whereas the transmission to regimental agents or " other persons, of the effects or proceeds of effects of offi- " cers and soldiers dying in his Majesty's service, or in the " service of the said Company, has been found highly

Recital of 58 G. 3. c. 73.

and 4 G. 4. c. 18. § 49.

"beneficial in securing an early distribution of such effects "among the relations of such officers and soldiers, at small "expense, and many sums are thereby saved to the relations "of soldiers, which would otherwise be, from their small "amount, wholly lost; and it is therefore expedient to "render the provisions of the said recited acts, relating to "such matters, more effectual;" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for all officers and persons, who may be employed or required by or under the authority of any articles of war in force for the time being, either for the officers or soldiers in the service of his Majesty, or for the European officers or soldiers in the service of the said Company, to take care of or collect, or superintend and direct the collection of the effects of officers or soldiers dying in service out of the United Kingdom, to ask, demand, and receive any such effects, and to commence, prosecute, and carry on any actions or suits for the recovery thereof, without taking out any letters of administration, either with any will annexed or otherwise, in like manner, in every respect, as if such officers or persons had been appointed executors, or had taken out letters of administration of such effects; and no Registrar of any court in the *East Indies*, or elsewhere, in any colonies or possessions of his Majesty abroad, shall in any manner interpose in relation to any such effects, unless required or authorized so to do by any such officers or persons under the provisions of this act; any act or acts of Parliament, law, statute, or usage to the contrary notwithstanding.

Officers and others, authorized under the articles of war, to take care of effects of officers and soldiers, may receive the same without taking out letters of administration, &c.

II. AND BE IT FURTHER ENACTED, that such effects, or proceeds of effects, when remitted to any regimental agent or other person, under any order or regulation of the Secretary at War in that behalf, or of the Military Secretary to the Government of any of the said Company's presidencies respectively, shall not, by reason of coming into the hands of such agent or person, be deemed or taken to be assets or effects within the province in which such agent or person shall reside, so as to render it

Effects remitted to agents, &c. not deemed assets so as to render administration necessary, &c.

necessary that administration should be taken out in respect thereof in such province, unless administration of any other effects of the officer or soldier, to whom the proceeds so remitted shall have belonged, shall have been or shall be taken out in such province; and it shall be lawful for the Secretary at War, in all cases relating to the effects of any officer or soldier in his Majesty's service, and for the Military Secretary to the Government of the presidency to which the deceased officer or soldier shall have belonged, in all cases relating to the effects of any European officer or soldier in the service of the said Company, to order, that any such effects, or proceeds of any such effects, shall be remitted to any other place where the same can be more conveniently paid over to the person or persons entitled thereto; and the obedience to any such orders, by any agent or person to whose hands any such effects shall come, shall be a sufficient discharge to such agent or person; and no such agent or person, shall be liable to any action or suit by reason of any such effects or proceeds of effects having been in his hands, and thereafter transmitted, under the order of the Secretary at War or Military Secretary respectively, in that behalf.

Place of remittance may be changed, to suit persons entitled to effects.

Agent, &c. indemnified.

III. AND BE IT FURTHER ENACTED, that it shall be lawful for the Secretary at War, in the case of any officer or soldier in his Majesty's service, and for the Military Secretary to the Government of the presidency, to which the deceased officer or soldier shall have belonged, in the case of any European officer or soldier in the service of the said Company, to order or direct the payment of any charges or expenses attending or relating to the illness or funeral of any such officer or soldier, out of any such effects or proceeds of effects, or out of any arrears of pay or half-pay, and that such charges and expenses, together with all regimental debts and military payments, which may be allowed under the provisions of any act or acts of Parliament, or articles of war, made in pursuance thereof, shall be made out of such effects or proceeds of effects, or arrears of pay or half-pay, and the surplus only, after such payment, shall be deemed the personal estate of the deceased.

Surplus only, after payment of funeral expenses and regimental debts, &c. deemed personal estate of deceased.

" *An* Act *for further regulating the payment of the* " Salaries *and* Pensions *to the* Judges *of his Majesty's* " *Courts in* India, *and the* Bishop *of* Calcutta; *for* " *authorizing the Transportation of Offenders from* " *the Island of* Saint Helena; *and for more effectual-* " *ly providing for the Administration of Justice in* " Singapore *and* Malacca, *and certain Colonies on* " *the Coast of Coromandel.*"

[5*th July* 1825.]

Puisne Judge executing office of Chief Justice, entitled to salary of Chief Justice during vacancy and until arrival of successor.

SEC. IV. AND BE IT FURTHER ENACTED, that when and as often as it shall happen, that in consequence of the vacancy of the office of Chief Justice in any of the said Supreme Courts of Judicature, at Fort William in *Bengal*, or at *Madras*, or *Bombay* respectively, one of the Puisne Judges of the said Courts respectively, shall preside for and exercise the office of such Chief Justice, such Puisne Judge so acting as Chief Justice during a vacancy, and until the arrival of the person appointed to succeed to the office of Chief Justice, shall be entitled to receive, in lieu of his proportion of salary as a Puisne Judge of such Court, such a proportion of salary (and no more,) as would have become due to such Chief Justice, during the period while the vacancy shall be supplied by such Puisne Judge as aforesaid, and that the payment of such rate of salary to the Puisne Judge so acting or having acted as such Chief Justice in any of the said Supreme Courts respectively, shall commence and take effect from the twenty-second day of January one thousand eight hundred and twenty-two.

V. AND BE IT FURTHER ENACTED, that in all cases from and since the said twenty-second day of January one thousand eight hundred and twenty-two, in which it has already happened, or when and as often as it shall hereafter happen, that any Chief Justice or Puisne Judge, of any of the said Supreme Courts of Judicature at Fort William in *Bengal, Madras,* or *Bombay,* or the Recorder of *Prince of Wales' Island,* or any Bishop of *Calcutta,* shall have departed or shall hereafter depart this life, either during his voyage to *India* or within six calendar months next, after the day when he shall have arrived in *India,* for the purpose of taking upon him the office of such Chief Justice or Puisne Judge, Recorder, or Bishop, the Court of Directors of the said United Company shall, and they are hereby required to pay, or direct and cause to be paid, out of the territorial revenues, from which the salary of such Chief Justice or Puisne Judge, Recorder, or Bishop so dying, shall be payable to the legal personal representatives of such Chief Justice or Puisne Judge, Recorder, or Bishop, so dying as aforesaid, such sum or sums of money as shall, together with the sum or sums paid to or drawn by such Chief Justice or Puisne Judge, Recorder, or Bishop, in respect of his salary, make up the full amount of one year's salary of the office to which he shall have been appointed; And that from and since the first day of January one thousand eight hundred and twenty-three, when and as often as it shall have happened or shall hereafter happen, that any such Chief Justice or Puisne Judge, Recorder, or Bishop, hath departed or shall depart this life, while in possession of such office, and after the expiration of six calendar months from the time of his arrival in *India,* for the purpose of taking upon him the office of Chief Justice, Puisne Judge, Recorder, or Bishop, then and in all and every of such cases, the said Court of Directors shall, and they are hereby required to pay, or direct and cause to be paid, out of the territorial revenues from which the salary of such Chief Justice, Puisne Judge, Recorder, or Bishop so dying, shall be payable to the legal personal representatives of such Chief Justice or Puisne Judge, Recorder or Bishop respectively, so dying as aforesaid, over and above what may have been due to such Chief Justice

Provision, in case any Judge or Bishop, &c. shall die either during his voyage to India or within six months after his arrival there.

And in cases of death after the expiration of six months.

or Puisne Judge, Recorder or Bishop respectively, at the time of his death, a sum equal to the amount of six calendar months' salary of the office of such Chief Justice or Puisne Judge, Recorder or Bishop respectively.

Recites 4 G. 4. c. 71. § 15, as to salaries and residence of Judges in India,

VI. " AND WHEREAS, under and by virtue *of the said* " *act of the fourth year of the reign of his present* " *Majesty*, his Majesty is empowered to direct and authorize certain allowances to be made out of the revenues " of the *British* territories in *India* to the Chief Justices " and Puisne Judges of the said Supreme Courts respectively, and to the Recorder of *Prince of Wales'* " *Island*, on their respectively resigning their respective " offices, after a residence in *India* for ten years; And, " whereas, it is expedient to shorten the period during " which such Chief Justices, Judges, and Recorders " respectively, are required to hold their offices in *India*, " before an allowance can be granted to them, and to make " other provisions respecting such allowances;" Be it therefore enacted, that so much of the said act of the fourth year of the reign of his present Majesty, as relates to the said allowances, and the length of residence in *India*, necessary to entitle the parties thereto, shall be, and the same is hereby repealed.

and repeals same.

Pension to Chief Justice and Judges on resignation.

VII. AND BE IT FURTHER ENACTED, that if any of the Chief Justices or Puisne Judges of the said Supreme Courts of Judicature at *Fort William, Madras*, or *Bombay* respectively, or the Recorder of the Court of Judicature of *Prince of Wales' Island*, shall resign his office, in consequence of age, infirmity, or other cause, to be approved by his Majesty, his heirs or successors, it shall and may be lawful for his Majesty, his heirs or successors, by warrants under the sign manual, to direct and authorize an allowance to be made out of the revenues of the *British* territories in *India*, to such Chief Justice, Puisne Judges, or Recorder so resigning, subject to the limitations and restrictions hereinafter provided, that is to say, provided always, that it shall not be lawful for his Majesty to direct any such allowance to be made to any person who shall not have resided in *India* for five years, either as Chief Justice or as a Puisne Judge, or partly as

Five years' residence necessary, either as Chief or Puisne Judge (or partly as one and partly as the other.)

one and partly as the other) of some or one of the said Supreme Courts.

VIII. PROVIDED ALSO, and be it enacted, that it shall not be lawful to direct any larger allowance to be made to any Chief Justice of the said Supreme Court of Judicature at Fort William, than the sum of one thousand pounds sterling per annum, unless he shall have resided in *India*, as such Chief Justice or Puisne Judge, or partly as one and partly as the other, for seven years; nor, if he shall have so resided for seven years, shall it be lawful to direct any larger allowance to be made to him, than the sum of one thousand three hundred pounds sterling per annum, unless he shall have resided in *India*, as such Chief Justice or Puisne Judge, or partly as one and partly as the other, for ten years; nor, if he shall, have so resided for ten years, shall it be lawful to direct any larger allowance to be made to him than the sum of two thousand pounds sterling per annum.

Limitation of pension to Chief Justice at Fort William.

IX. PROVIDED ALSO, and be it further enacted, that it shall not be lawful to direct any larger allowance to be made to either of the Chief Justices of the said Supreme Courts of Judicature, at *Madras* or *Bombay*, than the sum of eight hundred pounds sterling per annum, unless he shall have resided in *India*, as such Chief Justice or Puisne Judge, or partly as one and partly as the other, for seven years; nor, if he shall have so resided for seven years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand pounds sterling per annum, unless he shall have resided in *India*, as such Chief Justice or Puisne Judge, or partly as one and partly as the other, for ten years; nor, if he shall have so resided for ten years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand six hundred pounds sterling per annum.

Limitation of pensions to Chief Justices of Madras and Bombay.

X. PROVIDED ALSO, and be it further enacted, that it shall not be lawful to direct any larger allowance to be made to either of the Puisne Judges of the said Supreme Court of Judicature at Fort William, than the sum of seven hundred and fifty pounds sterling per annum, unless he shall have resided in *India*, as such Puisne Judge for

Limitation of pensions to Puisne Judges of Fort William.

seven years; nor, if he shall have so resided for seven years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand pounds sterling per annum, unless he shall have resided in *India*, as such Puisne Judge, for ten years; nor, if he shall have so resided for ten years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand five hundred pounds sterling per annum.

Limitation of pensions to Puisne Judges of Madras and Bombay.

XI. AND BE IT FURTHER ENACTED, that it shall not be lawful to direct any larger allowance to be made to any one of the Puisne Judges, of either of the said Supreme Courts of Judicature, at *Madras* or *Bombay* respectively, than the sum of six hundred pounds sterling per annum, unless he shall have resided in *India*, as such Puisne Judge, for seven years; nor, if he shall have so resided for seven years, shall it be lawful to direct any larger allowance to be made to him than the sum of eight hundred pounds sterling per annum, unless he shall have resided in *India*, as such Puisne Judge, for ten years; nor, if he shall have so resided for ten years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand two hundred pounds sterling per annum.

In what case only a Chief Justice is to have greater pension than Puisne Judge.

XII. PROVIDED ALSO, and be it further enacted, that it shall not be lawful for his Majesty, to direct any larger allowance to be made to any Chief Justice of any of the said Supreme Courts so resigning, than the amount by this act limited for the allowance to be made to the Puisne Judges of the Court to which such Chief Justice shall belong, unless he shall have held the office of a Chief Justice of one of the said Supreme Courts, during five years of his residence in *India*.

Limitation of pension to Recorder of Prince of Wales' Island.

XIII. AND BE IT FURTHER ENACTED, that it shall not be lawful to direct any larger allowance to be made to the Recorder of the said Court of Judicature of *Prince of Wales' Island*, than the sum of five hundred pounds sterling per annum, unless he shall have resided in *India*, as such Recorder, for seven years; nor, if he shall have so resided for seven years, shall it be lawful to direct any larger allowance to be made to him than the sum of six hundred and fifty pounds sterling per annum, unless he shall have

resided in *India*, as such Recorder, for ten years; nor, if he shall have so resided for ten years, shall it be lawful to direct any larger allowance to be made to him than the sum of one thousand pounds sterling per annum.

Time of Recorder appointed Judge to be reckoned at a certain rate.

XIV. PROVIDED ALSO, and be it further enacted, that if any person having for any time resided in the *East Indies*, as Recorder of the said Court of Judicature of *Prince of Wales' Island*, shall have been or shall be appointed to the office of Chief Justice or Puisne Judge, of either of the said Supreme Courts of *Fort William*, *Madras*, or *Bombay*, the period of residence of such person in the *East Indies*, as such Recorder of the said Court of Judicature of *Prince of Wales' Island*, shall be accounted and taken as and for a residence in *India*, as a Puisne Judge of such Courts respectively, in the proportion of three years' residence as such Recorder, to two years' residence as such Puisne Judge; and that if such person shall have resided in the *East Indies*, partly as such Recorder, and partly as such Chief Justice or Puisne Judge, it shall and may be lawful for his Majesty, his heirs and successors, in manner hereinbefore mentioned, to direct such allowance to be made to such person, as might lawfully be directed, in case such person had resided for the whole of such time as such Recorder, and had resigned the office of such Recorder, although such person may not have resided in *India*, for such length of time as to entitle him, under the provisions herein contained, to the allowance of a Chief Justice or Puisne Judge. (1)

Possessions, &c. on the Coast of Coromandel, &c., ceded to his Majesty, to be under the jurisdiction of Fort Saint George.

XX. AND BE IT FURTHER ENACTED, that from and after the first day of January next, the colonies, possessions, and establishments so ceded to his Majesty, and which are situate on the Coast of Coromandel, or in the Northern Circars in the *East Indies*, and all the inhabitants of the said colonies, possessions, and establishments, and all other persons being therein, shall cease to be subject to, and shall be wholly exempt from the jurisdiction of

(1) Sec. XVI. Resignation under ten years' service, for other cause than illness, not entitled to pension.

the said Supreme Court of Judicature in *Bengal;* and the said colonies, possessions, and establishments, and all the inhabitants thereof, and all other persons being therein, shall be subject and amenable to the jurisdiction and authority of the Supreme Court of Judicature at Fort Saint George in the *East Indies,* in like manner as any other place, being or deemed to be a factory, subordinate to the Government of Fort Saint George, and the inhabitants thereof, whether Europeans or natives, as the case may be, is or are, or ought to be liable and amenable thereto; the said act of the thirty-ninth and fortieth years of his late Majesty's reign, or any other law or statute to the contrary thereof, in any ways notwithstanding.

Singapore and Malacca annexed to Prince of Wales' Island.

XXI. AND BE IT FURTHER ENACTED, that it shall and may be lawful for the Court of Directors for the time being, of the said United Company, to declare and appoint, that the said island of *Singapore,* and the said town and port of *Malacca,* and its dependencies, and the colonies, possessions, and establishments, so ceded as aforesaid, or any of them, shall cease to be factories or a factory subordinate to the said presidency of Fort William in *Bengal,* and that they shall be annexed to, and be considered as, and be part of the settlement of *Prince of Wales' Island,* or as factories or a factory subordinate to the said presidency of *Fort Saint George,* or to any presidency or Government of the said United Company, or that they or any of them, shall be independent settlements or an independent settlement, subject to such Government as the said United Company, under and by virtue of the Charters granted to them or otherwise, may lawfully appoint, and from time to time, as occasion may require, to revoke and alter such appointments or appointment, and to place the said island, town, fort, and its dependencies, and the said colonies, possessions, and establishments under such presidency or Government, or to be independent, as to them shall seem fit and expedient, subject, nevertheless, to the superintendence, direction, and control of the Commissioners for the affairs of *India,* in like manner as any acts or orders of the said Court of Directors are now by law subject; and the said island, town, fort, and its dependencies,

colonies, possessions, and establishments, so ceded as aforesaid, and the revenues thereof, and the Civil Servants connected therewith respectively, shall, from and after the time, to be by the said Court of Directors limited and appointed, be to all intents and purposes annexed to the presidency of Government, to be appointed in manner aforesaid; or such island and places aforesaid, shall be an independent settlement or independent settlements, and the revenues and civil servants thereof, shall be annexed thereto, according to the true intent and meaning of such appointment as aforesaid; any law or statute to the contrary thereof, in any wise notwithstanding.

" *An* Act *to regulate the appointment of Juries in the* " East Indies."

[5*th May* 1826.]

Recites 13 G. 3. c. 63.

" WHEREAS, by an act passed in the thirteenth year " of the reign of his late Majesty, King *George* the Third, " intituled "*An Act for establishing certain regula-* " *tions for the better management of the Affairs of the* " East India *Company, as well in* India *as in* Europe," " it is among other things enacted, that all offences and " misdemeanors, which shall be laid, tried, and inquired " of in the Supreme Court of Judicature at Fort William " in *Bengal,* shall be tried by a jury of *British* subjects " resident in the town of *Calcutta,* and not otherwise;" " And, whereas, it is expedient, that the right and duty " of serving on juries within the limits of the local juris- " diction of the several Supreme Courts at *Calcutta* " *Madras,* and *Bombay,* should be further extended;" May it therefore please your Majesty, that it may be enacted, and be it enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that all good and sufficient persons, resident within the limits of the several towns of *Calcutta, Madras,* and *Bombay,* and not being the subjects of any foreign State, shall, according to such rules, and subject to such qualifications, as shall be fixed in manner hereinafter mentioned, be deemed capable of serving as jurors on Grand or Petit Juries, and upon all other inquests, and

All persons resident in Calcutta, Madras, and Bombay, not being the subjects of any foreign State capable of serving on juries.

shall be liable to be summoned accordingly; any thing in the said act, or in any other act, charter, or usage, to the contrary notwithsdanding.

II. AND BE IT FURTHER ENACTED, that the respective Courts of Judicature, at *Calcutta*, *Madras*, and *Bombay*, shall have power from time to time, to make and establish such rules with respect to the qualification, appointment, form of summoning, challenging, and service of such jurors, and such other regulations relating thereto, as they may respectively deem expedient and proper: Provided always, that copies of all such rules and regulations as shall be so made and established by such Court of Judicature, shall be certified under the hands and seals of the Judges of such Courts, to the President of the Board of Commissioners for the Affairs of *India*, to be laid before his Majesty for his royal approbation, correction, or refusal; and such rules and regulations shall be observed, until the same shall be repealed or varied, and in the last case with such variation as shall be made therein.

Courts may make rules with respect to qualification, &c. of Jurors,

which shall be laid before his Majesty.

III. PROVIDED ALSO, and be it further enacted, that the Grand Juries in all cases, and all Juries for the trial of persons professing the Christian religion, shall consist wholly of persons professing the Christian religion. (1)

Juries for trial of Christians to consist of persons professing the Christian religion.

(1) This section is repealed by 2 & 3 W. 4. c. 117. § 2.

" *An* Act *to declare and settle the law respecting* " *the liability of the* Real Estates *of* British *subjects* " *and* others, *situate within the jurisdiction of his* " *Majesty's Supreme Courts in* India, *as* Assets *in the* " *hands of Executors and Administrators, to the* " *payment of the* Debts *of their deceased owners.*"

[27*th June* 1828.]

" WHEREAS, some doubts have arisen whether, and " to what extent, the real estates of *British* subjects and " others, (not being Mahomedans or Gentoos,) situate " within or being under the jurisdiction of his Majesty's " Supreme Courts of Judicature in *India,* are liable, as " assets in the hands of executors and administrators, to " the payment of the debts of their deceased owners; " And, whereas it is expedient, that such doubts should " be removed;" Be it therefore, and it is hereby declared and enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that whenever any *British* subject shall die, seized of, or entitled to any real estate in houses, lands, or hereditaments, situate within or being under the general civil jurisdiction of his Majesty's Supreme Courts of Judicature, at Fort William in *Bengal, Fort Saint George,* and *Bombay* respectively, or whenever any person (not being a Mahomedan or Gentoo) shall die, seized of, or entitled to any such real estate, situate within the local limits of the civil jurisdiction of the same Courts respectively, such real estate of

Where any British subject, shall die, entitled to any real estate in India, or any person, not being a Mahomedan or Gentoo, entitled to such estate within local limits of Courts, such estate

such *British* subject or other person as aforesaid, (not being a Mahomedan or Gentoo,) is and shall be deemed assets, in the hands of his or her executor or administrator, for the payment of his or her debts, whether by specialty or simple contract, in the ordinary course of administration.

shall be deemed assets for payment of debts.

II. AND IT IS FURTHER DECLARED AND ENACTED, that it is and shall be lawful for such executor or administrator of such *British* subject or other person as aforesaid, (not being a Mahomedan or Gentoo,) to sell and dispose of such real estate for the payment of such debts as aforesaid, and to convey and assure the same estate to a purchaser, in as full and effectual a manner in law, as the testator, or intestate, of such executor or administrator, could or might have done in his life time.

Executors, &c. may sell such real estates for the payment of debts.

III. AND IT IS FURTHER DECLARED AND ENACTED, that in any suit or action to be commenced and prosecuted in any of the said Courts respectively, against such executor or administrator as aforesaid, for the recovery of any debt or demand due and owing by such testator or intestate in his life time and at the time of his death, such executor or administrator shall and may be charged with the full amount in value of such real estate as aforesaid, not exceeding the actual net proceeds of such estate when sold by the Sheriff, as assets in the hands of such executor or administrator to be administered.

In any action for debt, the executor may be charged with the full amount of such real estate.

IV. AND IT IS FURTHER DECLARED AND ENACTED, that in any such suit or action against such executor or administrator as aforesaid, it is and shall be lawful for the said Courts respectively, to award and issue such writs of sequestration and execution against such houses, lands, and real effects of such testator or intestate, in the hands of such executor or administrator as aforesaid, and to cause the same to be seized, sequestered, and sold, or possession thereof delivered under such writs respectively, in the same manner as such Courts could and might have done in the life time of such testator or intestate as aforesaid:

In suits against executors, &c. Courts may award writs of sequestration and execution, &c.

V. AND IT IS FURTHER DECLARED AND ENACTED, that all conveyances and assurances of such real estates

Conveyances and assurances

of such estates heretofore executed confirmed.

of such *British* subjects, and other persons so dying seized or entitled as aforesaid, (not being Mahomedans or Gentoos,) situate within or being under the general or local jurisdiction of such Courts respectively as aforesaid, heretofore made and executed by executors and administrators of such deceased *British* subjects and other persons as aforesaid, are hereby confirmed, and shall be deemed, held, and taken to be of the same force, validity, and effect in law, as if the same had been made and executed by such deceased persons in their life time.

This act not to alter the legal quality or tenure of any estates.

VI. PROVIDED NEVERTHELESS, and it is hereby declared and enacted, that neither this act, nor any thing herein contained, shall be construed to operate as, or have the effect of changing or altering the legal quality, nature, or tenure of any lands, houses, estates, rights, interests, or any other subject of property whatsoever, or of making the same or any of them to be of the nature of real property, if by law, before the passing of this act, the same or any of them were personal property; but that the law in that respect shall be and continue the same as if this act had not passed.

STAT. 9 GEO. 4. CAP. 73.

"*An* Act *to provide for the Relief of* Insolvent Debtors "*in the* East Indies, *until the first day of March, one* "*thousand eight hundred and thirty-three.*"

[19*th July* 1828.]

"WHEREAS, divers good laws have of late years "been established within the United Kingdom of *Great* "*Britain* and *Ireland*, for the relief of Insolvent Debt- "ors, and it is right that relief be given also to Insolvent "Debtors in some parts of the *East Indies*;" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of *March*, one thousand eight hundred and twenty-nine, there shall be holden, within the respective limits of the towns of *Calcutta*, *Madras*, and *Bombay*, separate Courts for the relief of insolvent debtors, which shall be Courts of Record, and shall be styled "*The Courts for the Relief of Insolvent Debtors*;" and that his Majesty's Supreme Courts of Judicature at *Calcutta*, *Madras*, and *Bombay* respectively, shall, from time to time, appoint such of their officers, or if the officers of such Supreme Courts shall be found insufficient, such additional persons as may be necessary, to transact the business of such Courts, and to act as common assignees, examiners, and ministerial officers of such Courts; and it shall be lawful for the said Courts for the relief of insolvent debtors to administer oaths, and examine parties and witnesses upon oath, or solemn affirmation; and the said Courts, within and throughout the *British* territories under the Government

Courts for the Relief of Insolvent Debtors to be held at Calcutta, Madras, and Bombay.

Powers of the said Courts.

of the United Company of Merchants of *England* trading to the *East Indies*, shall have the like powers of issuing commissions to take evidence, and of enforcing the attendance of witnesses, and the production of books, papers, and writings, and of summoning, examining, and enforcing the attendance of any insolvent debtor, or his wife, or any other person who may be able to give information respecting the debts, estates, or effects of any such insolvent debtor, as are now possessed by the said Supreme Court, or as are possessed by Commissioners of Bankrupt, in case of bankruptcy, for the purpose of summoning, examining, and enforcing the attendance of bankrupts and their wives, and other persons, under and by virtue of an act passed in the sixth year of the reign of his present Majesty, and intituled "*An Act to amend the laws relating to Bankrupts*;" And the said Courts for the relief of insolvent debtors shall also have the power of fining in a summary way, or of committing to the common gaol, all persons guilty of contempt of Court, and of fining in a summary way and of removing any of their officers who shall be guilty of negligence or misconduct; but the said Courts for the relief of insolvent debtors shall not have the power of awarding costs against any person, except in cases in which it is expressly permitted by this act, or in which it shall be expressly permitted by some rule which shall be made by the said Supreme Courts respectively, for the purpose and in the manner hereafter stated; Provided always, that the said Courts for the relief of insolvent debtors shall not summon or examine any native of the *East Indies*, otherwise than by commission, in any case in which such summoning or examination shall appear to the said Court to be repugnant to the customs and usages of the country.

as to issuing Commissions to take evidence.

Witnesses.

Books.

Insolvent, his wife and others,

same as Supreme Court or Commissioners of Bankrupt.

6 G. 4. c. 16.

Powers in cases of contempt, and neglect of officers.

Costs.

Proviso as to summoning or examining natives.

II. AND BE IT FURTHER ENACTED, that a Court for the relief of insolvent debtors shall be holden once a month, at least throughout the year, and oftener if need be, in *Calcutta*, and as often as may be found necessary within the towns of *Madras* and *Bombay*, by any one Judge of the said Supreme Courts of Judicature respectively; and it shall be lawful for the said Courts for the relief of

Practice of the Court.

To be held once a month at least by a Judge.

insolvent debtors to adjourn from time to time as they may think fit, and for the said Courts, and the said Supreme Courts respectively, to be sitting at one and the same time, and severally to act and proceed in the exercise of their respective powers; and every advocate or attorney of the said Supreme Courts at *Calcutta*, *Madras*, and *Bombay* respectively, shall be admitted to practice in the way of his profession in the said Courts for the relief of insolvent debtors respectively, and no other persons shall practice as advocates or attornies in the said Courts for the relief of insolvent debtors; and the said Supreme Courts of Judicature respectively, shall have power from time to time to establish rules to regulate the proceedings of the Courts for the relief of insolvent debtors to be holden within their respective jurisdictions, and especially to prescribe in what manner notice shall be given to the creditors of parties applying for relief under this act, and in what cases besides those mentioned in this act, costs may be awarded; and shall prepare, and cause to be sealed with their respective seals, a sufficient and proper list of fees to be charged and received by the officers of the Courts for the relief of insolvent debtors, and shall certify under their respective seals, and transmit to the President of the Board of Commissioners for the affairs of *India*, copies of such rules and lists of fees, to be laid before his Majesty for his royal approbation, correction or revision, and other copies of the same shall at all times be fixed in conspicuous places in the Courts for the relief of insolvent debtors; and no other fee or gratuity shall be received or taken by any officer or attorney of such last mentioned Courts on any pretence whatsoever, except such as shall be specified in such lists.

May sit at same time as Supreme Court.

Advocates and Attornies.

Supreme Court to establish rules to regulate proceedings.

Notices to creditors.

Costs.

Table of fees.

III. AND BE IT FURTHER ENACTED, that any person who shall be interested in any petition for relief which shall be presented by any insolvent person to any of the said Courts for the relief of insolvent debtors, or in any petition which shall be presented against any trader to any of the said Courts, praying an adjudication of insolvency as hereinafter mentioned, or in any proceeding of any of the said Courts respecting any such petition, upon

Parties interested upon depositing charges, may require evidence to be taken down in writing.

depositing, with the proper officer of the Court, a sum of money, of which the amount shall be fixed by the Court, may require that the whole of the evidence relating to any proceeding in which he has an interest may be taken down in writing by a sworn officer of the Court, and the same shall be done accordingly; and in case the party, who shall have so required such evidence to be taken down in writing shall not, within one calendar month, thereafter present his or her petition of appeal as is hereinafter directed, it shall be lawful for the Court in which such evidence shall have been so taken down in writing as aforesaid to pay the reasonable costs and expences thereof out of the money which shall have been so deposited as aforesaid, returning the overplus, if any, to the person who shall have deposited the same.

Parties aggrieved by any order may petition the Supreme Court, or a Judge, &c.

IV. AND BE IT FURTHER ENACTED, that it shall be lawful for any person who shall think himself aggrieved by any adjudication, order, or proceeding of any such Court for the relief of insolvent debtors to present, within one calendar month thereafter, a petition to the Supreme Court of Judicature of the presidency, where such Court for the relief of insolvent debtors shall be holden, or if such Supreme Court of Judicature shall not be sitting, then to present such petition to one of the Judges thereof; and it shall be lawful for the Court, or Judge, to which or to whom any such petition shall be presented, to order that the whole of the evidence, if any, which shall have been so taken down in writing as aforesaid, and the minutes and records of the proceedings of which complaint shall have been made, shall be brought before it; and the said last mentioned Court shall inquire into the matter of the petition and of such proceedings and evidence, and shall make such order thereon as to the same Court shall seem meet and just; and shall thereby direct by whom and in what manner the costs of such petition, and of the proceedings which shall have been had thereon, and of the taking down of any such evidence in writing, and of the proceedings of which complaint shall have been made, shall be paid; and such order shall be final and conclusive as to all parties, and shall be compulsory and binding upon the Court in

Proceedings to be brought before Supreme Court.

Order thereon.

Costs.

Order final.

which such proceedings, so complained of, shall have been had.

V. AND BE IT FURTHER ENACTED, that after the time hereinbefore appointed for this act to take effect, any person who shall be in prison within the respective limits of the towns of *Calcutta, Madras,* and *Bombay,* for debt, damage, cost, (1) or money which such person is solely, or jointly with any other or others, liable to pay, or for contempt of any Court whatsoever, *by the non-payment of money only,* may, at any time within fourteen days next after the commencement of the actual custody of such debtor, or afterwards, if the Court shall in any case think it reasonable and proper to permit the same, apply by petition to the Court for the relief of insolvent debtors within the presidency, where such insolvent debtor shall then be; and in such petition there shall be stated the place wherein the prisoner shall be then confined, the time when he or she shall have been first charged in custody, and the parties by whom, and the reasons, and the amount for which he or she shall, at the time of presenting such petition, be detained; and the said petition shall be subscribed by the prisoner with his name or mark, and shall forwith be filed in the Court to which it shall be presented; and if any persons so imprisoned as aforesaid shall be jointly indebted, it shall be lawful for them to apply jointly by petition, in such manner as is hereinbefore mentioned.

Persons imprisoned for debts, &c. may petition the Court for the relief of insolvents debtors.

Within what time.

What to be stated therein.

When jointly.

VI. AND BE IT FURTHER ENACTED, that if any person or persons being so indebted as aforesaid, and who shall reside within the jurisdiction of either of the said Supreme Courts at *Calcutta, Madras,* or *Bombay,* shall find that he, she, or they is or are in insolvent circumstances, but that he, she, or they has or have some estate and effects of the amount of half his, her, or their debts, of which instant possession might be given to an assignee, (2) it shall be lawful for such person or persons, without being in prison, to apply, jointly or severally, as the case may be, by petition to the Court for the relief of insolvent debtors

Insolvent persons who can deliver up property to the amount of half their debts may petition without being in prison.

(1) So in original.

(2) See §§ XXIII, XXIV and XXV, *post.*

to be holden at those places respectively, and the petition or petitions shall be subscribed by the insolvent or insolvents with his, her, or their name or names, and shall be forthwith filed in the said Court.

Insolvents petitioning jointly, may be required to file sole petition also.

VII. AND BE IT FURTHER ENACTED, that when any such joint petition as is aforementioned, shall be presented to any Court for the relief of insolvent debtors, it shall be lawful for the Court, if it shall see fit, to require and compel each of the insolvents to file a sole petition also, in order that upon one petition, and by the proceedings to be thereon taken, the Court may dispose of the estates and effects belonging to all the insolvents jointly, and that upon the other petitions, and the proceedings to be thereon taken, it may dispose of the estates and effects belonging to each insolvent separately; And if there shall be any residue of the joint estate and effects, after payment of the joint debts, such residue shall be duly divided and paid over to the several assignees, who shall have been appointed upon the sole petitions of those to whom such joint estate and effects shall have belonged; and, in like manner, if there shall be any residue of the separate estate and effects of any of the insolvents, after the payment of his or her separate debts, it shall be paid over to the assignee or assignees who shall have been appointed upon the joint petition.

Residue of joint or separate estates how to be disposed of.

Fines, penalties, forfeitures and recognizances, shall not be deemed debts for the purposes of this act.

VIII. PROVIDED ALWAYS, and be it further enacted, that no debt due to our Sovereign Lord the King, nor any fine, penalty, or forfeiture whatsoever, nor any recognizance, whereby a debt is acknowledged to the King, nor any debt due on account of any fine, penalty, or forfeiture, nor any estreat, shall be deemed or taken to be such a debt or debts as to entitle any person or persons to petition as is before mentioned, nor shall any person be entitled to receive any dividend for the same under this act, nor shall any such fines, penalties, forfeitures, recognizances, debts, or estreats be in any way discharged or affected by any thing done under this act, otherwise than they might, and would have been discharged, or affected, if this act had not been passed.

Nor affected thereby.

IX. AND BE IT FURTHER ENACTED, that the person or persons who shall present any such petition as is hereinbefore mentioned shall, at the time of presenting the same, execute an assignment to the common assignee, in such manner and form as the Court shall direct, of all his, her, or their real and personal estate, and effects, rights, dues, claims, choses in action, and interests, which he, she, or they shall then have or be entitled to, or which may in any way come to or be acquired by them before the Court shall have made its final order in the matter of his, her, or their petition.

On presenting petition, assignment to be made to common assignee of all present and future estate, acquired before final order.

X. AND BE IT ENACTED, that if any person who by an act passed in the sixth year of the reign of his present Majesty, intituled "*An Act to amend the laws relating to Bankrupts,*" or by any act hereafter to be passed, shall be deemed a trader liable to become bankrupt, having been arrested or committed to prison for debt, or on any attachment for non-payment of money, shall, upon such or any other arrest or commitment for debt, be in prison for twenty-one days, or having been arrested or committed to prison for any other cause, shall lie in prison for twenty-one days after any detainer for debt lodged against him, and not discharged; or, if any such person shall depart from within the limits of the jurisdiction of any of the said Supreme Courts, with intent to defeat or delay his or her creditors, it shall be lawful for any creditor to whom such person shall be indebted to the amount of one thousand sicca rupees, or for any two creditors to whom such person shall be indebted to the amount of one thousand five hundred sicca rupees, or for any three or more creditors to whom such person shall be indebted to the amount of two thousand sicca rupees, to present a petition to the Insolvent Debtors' Court of the presidency, within which such person shall have been imprisoned or have resided previously to such departure as aforesaid, stating the amount of the debt or debts due to such creditor or creditors from such person, and the nature of his trading, and such act of lying in prison or departure as aforesaid, and praying that such Court would proceed in like manner, as if such person had petitioned such Court for relief under this act; whereupon,

Any person deemed in law a trader, lying in prison twenty-one days for debt, or departing the jurisdiction with intent to defeat or delay creditors, shall be deemed to have committed an act of insolvency on which a creditor or creditors to certain amount may petition.

such Court shall inquire into the truth of such petition, and if such Court shall be satisfied thereof, such Court shall adjudge the same to be true, and that such person has committed an act of insolvency.

Upon such adjudication the Court to be invested with the same powers as if insolvent had petitioned.

XI. AND BE IT ENACTED, that upon such adjudication being made, such Court shall be invested with the same powers and authorities, with which such Court would have been invested or might have exercised in case such insolvent had presented a petition for relief under this act, and all the real and personal estate and effects, rights, dues, claims, choses in action, and interests, which such insolvent shall then have or be entitled to, or which may, in any way, come to or be acquired by such insolvent, before the Court shall have made its final order in the matter of such petition, shall, by force of such adjudication, be vested in the common assignee of the said Court, in like manner to all intents and purposes as if such insolvent had assigned the same under the directions of the said Court. Provided always, that in all cases where any adjudication of an act of insolvency shall have been pronounced by any Court for the relief of insolvent debtors, it shall be lawful for such Court, upon the petition of any person, so adjudged to have committed an act of insolvency, complaining of such adjudication, and upon proof of notice to the creditor or creditors, upon whose petition such adjudication shall have been pronounced, to appoint an early day for hearing such petition of complaint, and on such day or on any future day, to which such hearing may be adjourned, to hear such creditor or creditors and such complainant, by themselves or their counsel respectively, and to examine the evidence to be adduced by them respectively, and thereupon to revoke, or confirm such adjudication.

Proviso, that party may petition against such adjudication.

The filing a petition of an insolvent to be accounted an act of bankruptcy, if a person liable to become bankrupt.

XII. AND BE IT ENACTED, that the filing of every petition by an insolvent debtor in any of the said Courts for relief under this act, whether such insolvent shall be in custody or not, and every such adjudication of an act of insolvency, shall be accounted and adjudged conclusive evidence of an act of bankruptcy committed by such insolvent, from the time of filing such petition, or of such adjudication respectively, if such insolvent shall be a person

subject to the laws then in force respecting bankrupts; and any creditor or creditors of such insolvent, whose debt or debts shall be of sufficient amount to entitle him or them by law to petition for a commission of bankrupt, shall at any time within two months after notice of such petition or adjudication shall have been given in the *London Gazette*, as hereinafter directed, be at liberty to sue out a commission of bankrupt, in that part of the United Kingdom, called *England*, against such insolvent, under which commission all such proceedings may be had and taken as are authorized and directed or shall be authorized and directed, by the provisions of an act passed in the sixth year of the reign of his present Majesty, intituled "*An Act to amend the laws relating to Bankrupts*," or by any other act or acts hereafter to be passed respecting bankrupts, except as hereinafter provided.

When any creditor may sue out a commission of bankrupt in England.

XIII. AND BE IT FURTHER ENACTED, that when any creditor or creditors resident within the limits of the Charter of the said United Company, shall be desirous of suing out any such commission of bankrupt against any such insolvent, it shall be lawful for such person or persons to make proof of his, her, or their debt or debts, before such Court for the relief of insolvent debtors, which proof, if satisfactory to such Court, shall be certified under the seal of such Court; and the certificate thereof, on proof being made that the same is sealed with the seal of such Court, shall be sufficient evidence of a petitioning creditor's debt to warrant the issuing of such commission, and also to authorize the Commissioners under such commission to proceed thereon.

Commission may issue on certificate under seal of Court, of proof of debt by an Indian creditor.

XIV. PROVIDED ALWAYS, and be it further enacted, that in case of the issuing of any such commission of bankrupt against any such insolvent, such commission shall not in any manner affect, invalidate, or make void any of the proceedings of any Court for relief of insolvent debtors, nor any of the acts or proceedings of any assignee or assignees appointed by such Court, respecting any property or interest whatsoever of such insolvent, real or personal, within the limits of the Charter of the said United Company; Nor shall the assignee or assignees appointed under

Commission not to affect proceedings of Court or acts of assignee in India.

Assignee under commission

not to interfere with estate in India.

Assignee of Court not affected by commission;

But both to account together, and dividend rateably made amongst creditors in India and in Great Britain and Ireland.

any such commission acquire any right or title to take possession of, demand, sue for, or recover any property or interest whatsoever, real or personal, of such insolvent, within the limits aforesaid; but the assignee or assignees appointed by such Court for the relief of insolvent debtors shall continue, and shall, notwithstanding such commission of bankrupt, have full power and control over all the real and personal property of such insolvent within the limits aforesaid, and the distribution and management thereof, as effectually as if such commission of bankrupt had not issued; nevertheless, it shall be the duty of any assignee or assignees appointed by such Court, and the assignee or assignees chosen under the said commission, equally to come to account with each other, so as in the end that a dividend shall be rateably and proprotionably made among all the creditors of the said insolvent, whether resident within the limits aforesaid, or in the United Kingdom of *Great Britain* and *Ireland*.

All Creditors whose debts are allowed in Court, to receive equal dividend with creditors under commission,

and è converso

XV. AND BE IT FURTHER ENACTED, that all the creditors of any such insolvent, whose debts shall have been allowed in any Court for the relief of insolvent debtors, shall be admitted as creditors under any such commission of bankrupt, for the purpose of receiving an equal dividend upon the estate of such bankrupt with the creditors who shall have proved their debts under such commission; and, in like manner, all creditors whose debts shall have been duly proved under any such commission of bankrupt shall be admitted as creditors in such Court for the relief of insolvent debtors, for the purpose of receiving an equal dividend upon the estate of such insolvent with the creditors whose debts shall have been allowed in such Court.

Where insolvent declared bankrupt on ground of having filed petition, or of adjudication of act of insolvency, when to surrender.

XVI. PROVIDED ALWAYS, and be it enacted, that when any such insolvent shall be declared bankrupt upon the sole ground of his having filed such petition for relief in the said Court for the relief of insolvent debtors, or of such adjudication of an act of insolvency as aforesaid, he shall not be required to surrender or be liable to any penalty for not surrendering himself to be examined under his commission, until forty-two days after he shall

have come into some part of the said United Kingdom of *Great Britain* and *Ireland.*

XVII. AND BE IT ENACTED, that it shall be lawful for any creditors of such insolvent, who shall have duly proved their debts under any such commission as aforesaid, and for the Commissioners under such commission, if they shall be satisfied with such examination of such insolvent as shall have been had in any Court for the relief of insolvent debtors, to sign the certificate of such bankrupt; and such certificate shall have the same force and effect in all places situate without the limits aforesaid, and in respect of all debts due to persons resident at any such places without the limits aforesaid, at the date of such certificate, as if the same had been duly signed in the usual way, after such bankrupt had duly surrendered and passed his last examination.

Creditors and Commissioners may sign certificate of bankrupt, on examination before Court.

Effect of certificate.

XVIII. PROVIDED ALWAYS, and be it further enacted, that no creditor of such insolvent who shall be resident within the limits aforesaid, excepting only the petitioning creditor or creditors, in case he, she, or they, shall be so resident, shall be entitled to vote in the choice of the assignee or assignees, to be appointed under any such commission of bankrupt or otherwise, respecting the matters to be transacted under such commission of bankrupt, nor shall be reckoned among the creditors of the bankrupt in number or value whose signature is required by law to the certificate of such bankrupt.

No Indian creditor, except the petitioning creditor, if resident, to vote in the choice of assignee under Commission or otherwise.

XIX. PROVIDED ALSO, and be it enacted, that in all cases where any one member of a partnership to which any such insolvent shall be indebted shall be resident within the limits aforesaid, such partnership shall be accounted and taken as a creditor, resident in the *East Indies,* for the purposes of this act.

A Partnership creditor, resident in India.

XX. AND BE IT FURTHER ENACTED, that the principal officer of the respective Courts for the relief of insolvent debtors, shall cause notices to be inserted in the gazettes of the respective presidencies, within which such Courts shall be holden, of every petition which shall be filed in

When and by whom notices to be inserted in the Gazettes of the presidencies and in the London Gazette.

any of the said Courts by any insolvent for relief under this act, and of every such adjudication of an act of insolvency, and of every confirmation or revocation thereof, forthwith after the filing such petition or pronouncing such adjudication, or such confirmation or revocation thereof respectively; and that the Chief Secretary of the Government of the said presidencies respectively shall, without delay, transmit to the Court of Directors of the said United Company, by different ships, two or more copies at least of every such gazette, which shall contain any such notice as aforesaid, who shall, without delay, after the receipt thereof, cause such notice to be inserted in the *London Gazette.*

Production of the London Gazette containing such notice to be sufficient evidence.

XXI. AND BE IT ENACTED, that the production of the *London Gazette,* containing any such notice as aforesaid, shall be deemed and taken by all Commissioners of bankrupt, and all Courts whatsoever, to be sufficient evidence of the filing of the petition of such insolvent in such Court for the relief of insolvent debtors, and of such adjudication of an act of insolvency, and of such confirmation or revocation thereof.

When no commission of bankrupt shall issue, the assignee appointed by the Court may personally or by attornies get possession of and administer estate, in Great Britain or Ireland.

XXII. PROVIDED ALWAYS, and be it further enacted, that in all cases where an insolvent petitioning any such Court for relief, shall be possessed of any real or personal estate in the United Kingdom of *Great Britain* and *Ireland,* and no commission of bankrupt shall be sued out as hereinbefore mentioned, it shall be lawful for the assignee or assignees of the said insolvent, appointed by any such Court, to proceed, either by himself or themselves, or by any person duly authorized for that purpose by power of attorney, to get possession of such real and personal estate, and to dispose of the same in the most benefical manner, and to administer the proceeds thereof among the creditors of the said insolvent under the provisions of this act.

The Court may order part of the insolvent's effects to be left in his possession.

XXIII. AND BE IT ENACTED, that after the making of any such assignment as is hereinbefore directed, or after any such adjudication of insolvency as aforesaid, it shall be lawful for any such Court to direct that so much of the

wearing apparel, household furniture, working tools, and other necessaries of the insolvent or insolvents, and of his, her, or their family or families, as shall be fitting and suitable to his, her, or their condition and circumstances, may be left in his, her, or their possession until the further order of the Court, not exceeding in value in the whole the sum of one thousand sicca rupees: Provided always, that when any person or persons shall have executed any such assignment without being in custody, he, she, or they shall be required forthwith to put the assignee or assignees into possession of his, her, or their estate and effects of the amount of half their debts; and the assignee or assignees who shall be so put into possession shall, according to the best of his or their knowledge and belief, forthwith certify the same to the Court by which he or they shall have been appointed; and until such assignee or assignees shall have so certified, no such order as is hereinbefore mentioned, for leaving part of the effects of such insolvent or insolvents in his, her, or their possession, shall be made, nor any other step taken towards granting the prayer of the petition of the insolvent or insolvents, or any part thereof. (1)

not exceeding 1,000 Rs.

Insolvent not in custody, to put assignee into possession of estate of half amount of debts, and assignee to certify the same.

Until certified, no order to be made, or step taken.

XXIV. AND BE IT ENACTED, that when any assignee or assignees shall have so certified as is last hereinbefore mentioned, it shall be lawful for the said Courts for the relief of insolvent debtors at *Calcutta, Madras,* and *Bombay* respectively, to grant and deliver, to the person or persons by whom such estate or effects shall have been given up, a certificate or certificates of his, her, or their having delivered to his, her, or their assignee or assignees, property which is believed to be of the amount of half their debts; and every such last mentioned certificate shall, until the said Courts respectively, shall make order to the contrary, have the effect of protecting the person to whom it shall be so given from being arrested for debt within the limits of the towns of *Calcutta, Madras,* and *Bombay* respectively, or any other place within the

The Court may, upon such certificate, give the insolvent a protection from arrest in India

(1) See § VI. *ante.*

Leave of Court being obtained for departing from Calcutta.

limits of the Charter of the said United Company to which such persons shall resort with leave of the said Courts respectively, signified in writing; and if any such person shall, contrary to the aforesaid provisions, be arrested for debt, and the officer who shall have arrested him or her, shall, after having seen such last mentioned certificate and leave, refuse to discharge such person, he shall forfeit to the same person fifty sicca rupees for every day he shall detain him or her, which sum or sums may be recovered by action of debt in any of his Majesty's Courts of Record, within the jurisdiction of which the arrest shall have been made and such action shall be brought in the name of the person so detained, who, if he shall recover in such action, shall also have full costs of suit.

Penalty on officer refusing to discharge after notice.

Where insolvent in custody, after assignment executed, puts assignee in possession of amount of half his debts, and same certified, Court may discharge from prison.

XXV. AND BE IT ENACTED, that when any person or persons being in custody shall have executed any such assignment as is hereinbefore mentioned, if he, she, or they shall in like manner put the assignee or assignees to whom the assignment shall have been made into possession of his, her, or their estate or effects of the amount of half their debts, and the assignee or assignees of such prisoner or prisoners, shall have certified the same to the Court for relief of insolvent debtors, in such manner as hereinbefore is mentioned, (1) and the Court shall be satisfied of the truth thereof, it shall be lawful for such Court to discharge such person or persons from custody, and to grant and deliver to him, her, or them the like certificate and leave, which shall have the like consequences and effects in protecting him, her, or them from being arrested for debt: Provided always, that it shall at all times be lawful for such Court to revoke and annul such certificate or leave, if it shall appear to such Court that such certificate or leave hath been unfairly obtained, or improperly used.

And grant certificate and leave.

Proviso, when Court may revoke same.

General effect of the assignment.

XXVI. AND BE IT ENACTED, that every such assignment as is hereinbefore mentioned, shall have the effect of conveying or transferring to and of vesting in the assignee or assignees, who shall have been appointed by the Court

(1) See §§ VI, XXIII and XXIV, *ante*.

and named in the assignment, the whole estate and effects, real and personal, and all rights, duties, claims, choses in action, interests, and property whatsoever, which at the time of executing the assignment shall belong to the insolvent or insolvents, either solely or jointly with any other person or persons, or which shall come to or be required,(1) by him, her, or them, or to which he shall be or become entitled in reversion, remainder, or expectancy, before the Court shall have made an order for the discharge of such insolvent or insolvents from all liability as hereinafter mentioned, and the effect also of entitling and empowering the assignee or assignees to give such discharges for debts due to such last mentioned person or persons as may be requisite; and every such assignment, as is hereinbefore mentioned, shall be in trust for the benefit, in proportion to their respective dues and just claims, of all the creditors of the person or persons executing the assignment.

Offices, appointments, and benefices, if saleable, to pass to assignee, and, if not, Court may order insolvent to pay a proportion of receipts therefrom to assignee.

XXVII. AND BE IT FURTHER ENACTED, that if any insolvent at the time of making any such assignment as is hereinbefore mentioned, shall hold any public office, appointment, or benefice, civil, military, or ecclesiastical, under the Crown of the United Kingdom of *Great Britain* and *Ireland*, or under the said United Company, and if his interest in such office or appointment shall be such that he might lawfully sell the same, such interest for the purpose of sale shall, by the assignment, be transferred to and vested in the assignee or assignees in trust for the benefit of his creditors, and if his interest therein shall not be such as he might lawfully sell, then it shall be lawful for the said Court to order the said insolvent to pay such proportion of his receipts therefrom, to his assignee or assignees, as the said Court shall think just and right.

Voluntary preference by insolvent fraudulent and void as against assignee

XXVIII. AND BE IT ENACTED, that if any insolvent who shall file his or her petition for his or her discharge under this act, or if any trader who shall be adjudged to have committed an act of insolvency on the petition of

(1) So in original.

if made within two months before petition, or with the view of insolvency.

any such creditor or creditors as aforesaid, being in insolvent circumstances, shall voluntarily convey, assign, transfer, charge, deliver, or make over any estate, real or personal, security for money, bond, bill, note, money, property, goods, or effects whatsoever, to any creditor or other person whomsoever, or to any person in trust for or to or for the use, benefit, or advantage of any creditor or other person whomsoever, every such conveyance, assignment, transfer, charge, delivery, and making over, if made within two months before the date of such petition, or with the view or intention, by the party so conveying, assigning, transferring, charging, delivering, or making over, of petitioning the said Court for his or her discharge from custody under this act, or of committing such act of insolvency, shall be deemed and is hereby declared to be fraudulent and void as against the common or other assignee or assignees of such prisoner appointed under this act.

No distress for rent shall be made after the assignment.

XXIX. AND BE IT ENACTED, that after any such assignment shall be made by any petitioner or petitioners, as hereinbefore mentioned, or after any such adjudication of an act of insolvency as aforesaid, no distress for rent due before the filing of such petition or adjudication shall be made upon the goods or effects of any such insolvent or insolvents before the final order of the Court shall have been made in the matter of the petition before the Court, but the landlord, or party to whom the rent shall be due shall be allowed to come in as a creditor, and receive any dividend or dividends in proportion to the amount of any rent due, in like manner as other creditors in proportion to the amounts of their respective dues.

Landlord to rank with other creditors.

After assignment to common assignee, or after adjudication, Court may appoint others, to whom estate to be assigned by common assignee.

XXX. AND BE IT FURTHER ENACTED, that after any such assignment or conveyance as by the provisions of this act are required to be made to the common assignee of the Court for relief of insolvent debtors, or after any such adjudication as aforesaid, it shall be lawful for the said Court respectively, at any time in their discretion, to appoint some other assignee or assignees, and when such new assignee or assignees shall have signified to the Court his or their acceptance of the appointment, the estate, effects, rights, dues, claims, choses in action,

interest, trusts, and powers, which shall have been assigned or conveyed, transferred to, or vested in such common assignee, shall immediately be assigned and conveyed by him to such new assignee or assignees as aforesaid, upon the same trusts and for the same purposes as they are before assigned and conveyed; and in case any assignee or assignees shall be unwilling to act, or in case of the death or incapacity or misconduct of any assignee or assignees, it shall be lawful for the Court, by which he or they shall have been appointed, to order that any assignment or conveyance to him or them shall be vacated, and the same shall be vacated accordingly, but so nevertheless that no act or thing done prior to the order whereby they are vacated shall be annulled, or in any way affected thereby; and it shall also be lawful for the Court to appoint a new assignee or assignees, with like powers and authorities, and to oblige any assignee or assignees so removed, and the heirs, executors, administrators, and assigns of any deceased assignee to account for and deliver up all such estate and effects, books, papers, writings, deeds, and all other evidences relating thereto, as shall have come to his, her, or their hands by virtue of any assignment or conveyance made under this act, and the decision of the Court thereupon shall be final and conclusive; and from and immediately after any such appointment as is aforesaid of any new assignee, all the estate, effects, rights, dues, claims, choses in action, interest, trusts, and powers assigned or conveyed to or vested in the assignee or assignees, in the room of whom such new assignee or assignees as aforesaid, shall have been appointed, shall by virtue of such appointment be transferred to and become vested in such new assignee or assignees; and whenever an assignee shall die or be removed, or a new assignee or assignees shall be appointed as aforesaid, no action at law or suit in equity brought or defended by him or them in the character of assignee or assignees under this act, shall be thereby abated, but upon the suggestion of such death, removal, or new appointment, such action or suit shall be prosecuted or defended in the name of the existing assignee or assignees; And all such assignments, conveyances, and appointments, as it is hereinbefore mentioned are to be

In case assignee unwilling to act, or of death, &c.

Court may vacate assignment, and appoint others.

And compel assignee removed, and heirs and executors of deceased assignee to account, &c.

Actions not to abate by the death or removal of assignee;

but suggestion entered.

Assignments to be recorded.

made under the directions of the Courts for the relief of insolvent debtors, shall be entered on the proceedings of the Court by the order of which they shall be made.

Insolvent petitioning, to deliver into Court, within 30 days, or further time allowed,

XXXI. AND BE IT ENACTED, that when any such petition as is aforesaid shall be presented by any insolvent or insolvents to the said Court for the relief of insolvent debtors, the party or parties presenting the petition, at the same time or within thirty days after, or within such further time as the said Court may deem reasonable, shall deliver into the Court a schedule containing a full and true account of all his, her, or their debts, whether due by him, her, or them solely, or jointly with any other person or persons, and of all claims made upon the insolvent or insolvents for any such debts not admitted to be due, together with a full and true description of the several persons to whom such debts shall be owing, or by whom such claims shall have been made, and also a true and perfect account of all the estates and effects, real and personal, of the insolvent or insolvents, in possessions, reversion, remainder, or expectancy, wheresoever situate, and of all his, her, or their rights, dues, claims, choses in action, and interests, and of all trusts and powers which can in any way be available for the benefit of his, her, or their creditors; and such schedule shall also contain a full and true statement of the names and places of abode of the person or persons from whom any debt or debts shall be owing to the petitioner or petitioners, himself or themselves, or to him, her, or them jointly with any other person or persons, or against whom any claim or action may be brought, maintained, and enforced, and of the witnesses who may be able to prove such debts or support such claim or action, together with any other particulars which may be required by any rules to be established for the practice of the said Courts for the relief of insolvent debtors respectively, or for giving further effect to this act in the manner which is hereinbefore set forth; and every such schedule so delivered as aforesaid, shall be subscribed by the insolvent or insolvents delivering the same with his, her, or their names, and shall forthwith be filed in the Courts.

Schedule subscribed by him, of debts admitted, and claims disputed,

and of estate and effects;

and also names, &c. of persons indebted to him

XXXII. PROVIDED ALWAYS, and be it further enacted, that after any such adjudication of an act of insolvency as aforesaid, (1) it shall be lawful for any insolvent to file a schedule in the Court by which such adjudication shall have been pronounced, in like manner as if such insolvent had presented a petition for relief under this act; which schedule shall have the like effect and be acted upon in the like manner, and from which schedule such insolvent shall be entitled to the like benefit, as if the same had been filed in consequence of a petition for relief presented by such insolvent under this act.

Insolvent may file schedule after adjudication of an act of insolvency,

as if he had petitioned, and same to have like effect as in that case.

XXXIII. AND BE IT ENACTED, that after the petition and schedule of any insolvent shall have been filed in any Court for the relief of insolvent debtors, and assignment shall have been made as hereinbefore directed, and after any such adjudication of an act of insolvency shall have been pronounced upon the petition of any creditor or creditors of such insolvent as aforesaid, the Court shall cause notice thereof to be given to any creditor or creditors of the insolvent at whose suit he or she may be detained in custody, or the attorney or agent of such creditor or creditors, and to the other creditors resident within the *British* territories in the *East Indies*, as the Court shall direct; and notice to the like effect shall be twice at least published in the gazette of the presidency where such Court shall be holden; and the Court in such notice shall appoint a day and place for the hearing of the matters of the petition of such insolvent, or of any such creditor or creditors of such insolvent as aforesaid, after such convenient interval of time that all the creditors resident within the *British* territories in the *East Indies*, may have sufficient opportunity of examining and ascertaining the truth or falsehood of the insolvent's petition and schedule.

After petition and schedule filed and assignment made and after adjudication of an act of insolvency,

Court to cause notice to be given to detaining and other creditors in India, and twice in the gazette of the presidency,

and appoint a day for hearing the same.

XXXIV. AND BE IT FURTHER ENACTED, that upon the day so appointed by the Court as aforesaid, for the hearing of any petition, or on any future day to which such hearing may be adjourned, it shall be lawful for the insolvent or

Hearing of petitions.

(1) See § X. *ante*.

Insolvent or creditor may be heard in person or by counsel.

insolvents, and for any creditor or creditors of the insolvent or insolvents, to be heard, either by himself, herself, or themselves, or by counsel, in support of or in opposition to the petition before the Court, and the whole matter and substance of the petition shall be inquired into and examined by the Court, as well respecting the claims of any creditors who shall be absent, as of those who shall be present; and it shall be lawful for the Court to order any insolvent who is in custody to be brought before it as often as occasion may require, and to summons any insolvent who shall not be in custody, and the wife of any insolvent, and any other person, whether a creditor or not, who is known or suspected to have any of the estate or effects of the insolvent or insolvents in his or her possession, or any person who is suspected to be indebted to the insolvent or insolvents, or any person who is believed to be capable of giving any information which will more easily enable the Court to dispose of the estate and effects of the insolvent or insolvents for the benefit of his, her, or their creditors; and it shall also be lawful for the Court to examine any insolvent or his wife, or any other such person, whether a creditor or not, who shall appear before the said Court, in the same way as any other witnesses are examined in any of his Majesty's Courts of Record in the *East Indies*, in any suits at law or in equity, or according to any rules which may be made for the practice of the said Courts for the relief of insolvent debtors respectively, or for giving effect to this act in the manner which is herein prescribed: Provided always, that every witness summoned to attend before the Court shall have his necessary expences tendered to him, in like manner as by law is required upon service of a subpœna to a witness in an action at law.

Court may order insolvent in custody to be brought up;

And summon him, his wife, and others, known or suspected to possess any effects of, or to be indebted to insolvent; or capable of giving information beneficial to creditors;

and examine all parties appearing.

Expences of witnesses, to be tendered.

XXXV. PROVIDED ALSO, and be it enacted, that in all cases where any creditor or other person shall reside more than one hundred miles from the said Court, or shall be incapable of attending the said Court by reason of sickness or infirmity, to be proved to the satisfaction of the Court, it shall be lawful for the Court to receive the affidavit or solemn affirmation of such creditor or other

Where creditor or other person is distant above 100 miles, or incapable of attending, Court may receive affidavit.

person; And also, if the Court shall think fit, to permit interrogatories to be filed for the examination and cross-examination of any person making or joining in such affidavit or solemn affirmation.

And permit interrogatories to be filed.

XXXVI. AND BE IT FURTHER ENACTED, that when there has been mutual credit given by the insolvent or insolvents and any other person or persons, one debt or demand may be set against the other, and all such debts, dues, and claims as may be proved under a commission of bankruptcy, according to the provisions of an act passed in the sixth year of the reign of his present Majesty, intituled "*An Act to amend the law relating to Bankrupts*," or may hereafter be proveable under such commission by virtue of any act hereafter to be passed, may also be proved upon any such hearing as is hereinbefore mentioned, in the same manner, and subject to the like deductions, conditions, and provisions, as in the said last mentioned act are set forth and prescribed. (1)

Mutual debts, may be set-off,

and all debts proveable in cases of bankruptcy under 6 G. 4 c. 16, or subsequent acts, may be proved upon hearing.

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(1) James Young and others, appellants, and the Bank of Bengal, respondents. 1 Dea. C. B. 622. S. C. 1 Moore Ind. App. 87.

"Palmer and Co. having borrowed a large sum of the Bank of Bengal, deposited Company's paper with the Bank to a great amount as a collateral security, accompanied with an agreement in writing, authorizing the Bank, in default of a repayment of the loan by a given day, to sell the Company's paper for the reimbursement of the Bank, rendering to Palmer and Co. any surplus."

Before default was made in repayment of the loan, Palmer and Co. were declared insolvents, under the Indian Insolvent Act, 9 Geo. 4. c. 93, by the 36 Section, of which it was declared, that when there had been mutual credit given by the insolvents and any other person one debt or demand might be set-off against the other, and that all such debts as might be proved under a commission of bankruptcy in England, might be proved in the same manner under the Indian Insolvent Act. At the time of the adjudication of insolvency, the Bank were also holders of two promissory notes of Palmer and Co. which they had discounted for them before the transaction of the loan, and the agreement as to the deposit of the Company's paper. The time for repayment of the loan having expired, the Bank sold the Company's paper, the proceeds of which, after satisfying the principal and interest due on the loan, produced a considerable surplus.

In an action by the assignees of Palmer and Co. against the Bank to recover the amount of this surplus.

Held, that the Bank could not set-off the amount of the two promissory notes, and that the case did not come within the clause of mutual credit in the Bankrupt Act.

Creditors may claim although omitted in schedule, or inserted for less than due.

XXXVII. AND BE IT FURTHER ENACTED, that when any petition shall have been presented under this act to any of the said Courts for the relief of insolvent debtors, either by an insolvent or by any creditor or creditors of such insolvent, it shall be lawful for any person or persons to whom such insolvent shall be indebted, at any time before or after the discharge of such insolvent, to make claim upon the estate of such insolvent, and to prove his or their debt or debts, whether due by such insolvent solely, or jointly with any other person or persons, and shall be entitled to and receive a dividend thereon rateably with the other creditors of the said insolvent, although the name of such creditor may have been wholly omitted by the said insolvent, in his or her schedule, or may have been inserted for a smaller amount than the debt really due to such person; And in the case of an adjudication of an act of insolvency under this act, then, although no schedule shall have been filed by such insolvent, and where any objection to the existence or amount of such debt, so claimed, shall be made by such insolvent or any creditor, such Court shall hear the same, and make such order thereon as may seem meet and just.

In case of adjudication of act of insolvency, and no schedule filed, and claim objected to, same to be heard.

Order of Court upon hearing, that insolvent entitled to the benefit of the act,

for discharge,

to dismiss or amend petition or schedule,

adjourn hearing,

refer to examiner,

Remand insolvent.

commit for debt if not in custody,

cancel or renew certificate,

XXXVIII. AND BE IT FURTHER ENACTED, that upon the hearing of any such petition it shall be lawful for the Court to adjudge that the insolvent is entitled to the benefit of this act, and to order his immediate discharge from custody accordingly, or to dismiss or amend the petition, or to order the insolvent or insolvents to amend his, her, or their schedule or schedules, or to adjourn the further hearing of the petition until a future day, or to make a reference to the examiner, or other proper officer of the Court, to make inquiry into any matter of account, or into the truth of the schedule or schedules, and to report thereon to the Court; and it shall also be lawful for the Court to remand the insolvent or insolvents to prison, until the further hearing of the petition, or until final order be made in the matter thereof, or to commit the insolvent or insolvents to custody for any debt or debts, if he, she, or they shall not be in custody at the time of the hearing, and to cancel or renew any such certificate as is hereinbefore

mentioned, which may have been given for the purpose of protecting the insolvent or insolvents from arrest, or to make any fresh order for protecting the insolvent or insolvents from arrest, until final order shall be made in the matter of the petition before the Court, and to order and direct that the assignee or assignees shall make some reasonable allowance for maintenance until such final order, the amount of which shall be fixed by the Court; and shall not exceed five sicca rupees *per* week: Provided always, that in case of the Court dismissing any petition, the acts, previously done by the assignee or assignees, or any person or persons acting under his or their authority, in pursuance of this act, shall be valid; but in such case the Court shall make such order for re-assigning and re-delivery to the insolvent, the residue of his or her estate and effects, as the case shall require, whereupon the same shall be revested in such insolvent accordingly.

order for maintenance.

XXXIX. AND BE IT FURTHER ENACTED, that the Court, by which any order shall be made upon any such hearing, as is hereinbefore mentioned, shall also order that the assignee or assignees shall give such notice of such order having been made as to the Court shall seem fit and convenient.

Public notice to be given by assignee of orders on hearing.

XL. AND BE IT FURTHER ENACTED, that the discharge of any such insolvent so adjudicated as aforesaid, shall and may extend to any sum and sums of money, which shall be payable by way of annuity or otherwise, at any future time or times, by virtue of any bond, covenant, or other security whatsoever; and that every person and persons who would be a creditor or creditors of such insolvent for such sum or sums of money, if the same were presently due, shall be admissible as a creditor or creditors of such insolvent for the value of such sum or sums of money so payable as aforesaid; which value the said Court shall, upon application at any time made in that behalf, ascertain, regard being had to the original price given for such sum or sums of money, deducting therefrom such diminution in the value thereof as shall have been caused by the lapse of time since the grant thereof to the time of filing such insolvent's petition; and such creditor or creditors

Discharge to extend to sums payable by way of annuity.

And creditor to rank according to value to be ascertained by Court.

shall be entitled, in respect of such value, to the benefit of all the provisions made for creditors by this act, without prejudice nevertheless to the respective securities of such creditor or creditors, excepting as respects such insolvent's discharge under this act.

Actions pending, on hearing, or for claims admitted in the schedule, or disputed as to amount only, to be discontinued.

XLI. AND BE IT FURTHER ENACTED, that if at the time of any such hearing and order any suit or action shall be pending against the insolvent or insolvents in any Court within the *British* territories in the *East Indies*, or for any debt, claim, obligation, or demand admitted in the schedule of the insolvent or insolvents, or disputed as to amount only, every plaintiff in such suit or action shall discontinue the same, and shall pay all costs incurred subsequent to his having notice of such hearing and order; and in case of such discontinuance, the insolvent or insolvents shall not, by virtue of any *supersedeas*, nonsuit, or judgment as in case of nonsuit in any such suit or action, be relieved from the debt, claim, obligation, or demand, for which it shall have been brought, or entitled to claim from the plaintiff or plaintiffs any of the costs of any such suit or action incurred before the plaintiff or plaintiffs had notice of the hearing and order aforesaid.

Assignee to take immediate possession and recover insolvent's estate.

XLII. AND BE IT FURTHER ENACTED, that every such assignee as aforesaid, shall, with all convenient speed, take possession, by himself, or by means of messengers of the Court, or by other fit and proper persons, of all the real and personal estate and effects of the insolvent of which immediate possession may be obtained, and shall use his or her best endeavours to seize, obtain, recover, and reduce into possession as speedily as possible, the rest of such estate and effects, and all debts, claims, and choses in acton, which by such assignment he shall have been empowered to obtain, recover, and get in.

The Court may sell the reputed property of the insolvent.

XLIII. AND BE IT FURTHER ENACTED, that if any such insolvent or insolvents as are before mentioned, at the time of filing his, her, or their petition, or at the time of any such adjudication of an act of insolvency as aforesaid, shall, by the consent and permission of the true owner

thereof, have in his, her, or their possession, order or disposition, any goods or chattels whereof, he, she, or they is or are reputed owner, or of which he, she, or they have undertaken the sale, alteration, or disposition, as owner, the Court in which the petition shall have been filed, or by which such adjudication shall have been pronounced, shall have power to sell and dispose of the same for the benefit of the creditors of such insolvent or insolvents; provided that nothing herein contained shall invalidate or affect any transfer or assignment of any ship or vessel, or any share thereof, made as a security for any debt or debts, either by way of mortgage or assignment, according to the provisions of an act of Parliament made in the sixth year of the reign of his present Majesty, and intituled *An Act for the registering of* British *vessels.*

Proviso.

Not to affect any transfer of a ship duly mortgaged.

XLIV. AND BE IT FURTHER ENACTED, that if any insolvent or insolvents shall have mortgaged, pledged, pawned, or deposited any real or personal estate, or any effects, deeds, or written instruments, with a reservation to himself, herself, or themselves of a power of redeeming the same, his, her, or their assignee or assignees shall have the same right and power of redemption, as the insolvent or insolvents would have had, if the assignment had not been made.

Assignee may redeem any property of insolvents, redeemable by them.

XLV. AND BE IT ENACTED, that if any insolvent or insolvents shall, at the time of filing his, her, or their petition for relief in any such Court for the relief of insolvent debtors, or at the time of any such adjudication of an act of insolvency as aforesaid, or at any time before he or she shall become entitled to his or her final discharge according to this act, have any Government stock, funds, or annuities, or any of the stock of any public Company either in *England, Scotland,* or *Ireland,* standing in his, her, or their own name or names, in his, her, or their own right, it shall be lawful for such Court, whenever it shall deem fit so to do, to order all persons whose act or consent is thereto necessary to transfer the same into the name or names of such assignee or assignees as aforesaid, and all such persons, whose act or consent is so necessary as aforesaid are hereby indemnified for all things done or

Where insolvent beneficially entitled to Government or other public stock in Great Britain or Ireland, Court may order transfer thereof to assignee.

Proviso, that transferree be described as assignee, and no dividends payable or future transfer made, except under power executed before an officer of Court and another, and seal affixed.

permitted pursuant to such order: Provided always, that in all transfers the name or names of any such assignee or assignees, the transferee or transferees shall be described as assignee or assignees of the estate and effects of the insolvent; and no dividend shall be payable to, nor any future transfer made by any person of any such stock, funds, or annuities, except under a power of attorney in the usual form required for the receipt of dividends upon or transfer of such stock, funds, and annuities respectively, duly executed by such assignee or assignees, and attested by two credible witnesses, one of whom shall be an officer of such Court for the relief of insolvent debtors, and to which attestation the seal of such Court shall be affixed.

Assignee, with approbation of Court and consent of creditors in India to certain amount, may compromise debts due to insolvent, and submit to arbitration generally.

XLVI. AND BE IT FURTHER ENACTED, that after the hearing of any such petition and schedule as hereinbefore mentioned, it shall be lawful for the assignee or assignees, by and with the approbation of such Court, and by and with the consent of any creditors whose claims after such hearing shall appear to amount to more than half of all the debts due from the insolvent to persons resident within the *British* territories in the *East Indies*, to take such reasonable part of any debts due to the petitioner or petitioners, as may by composition be gotten, in full discharge of such debts; And to submit to arbitration any difference or dispute between the assignee or assignees, and any other person or persons, for or on account or by reason of any thing relating to the estate and effects of such prisoner.

Assignee may with like approbation and consent prosecute and defend actions at law and in equity, and defray costs out of estate. Court may allow them to

XLVII. AND BE IT FURTHER ENACTED, that it shall be lawful for the assignee or assignees, by and with the like approbation and consent, to commence and prosecute or defend any suits or actions at law or in equity, which the insolvent or insolvents might have commenced and prosecuted or defended, and to defray the costs to which he or they may be put, in respect of such suits or actions, out of the proceeds of the estate and effects of the insolvent or insolvents; and if there be any partner or partners of the insolvent or insolvents who hath not or have not joined in the petition, it shall be lawful for the Court to authorize the assignee or assignees to join such partner or

partners with himself or themselves as plaintiffs in such suit or action; and if such partner or partners shall execute any release of the debt or demand for which such suit or action is brought, the release shall be void: Provided always, that such partner or partners, if he, she, or they shall take no part in the prosecution or defence of such suit or action, shall not be liable to pay costs in respect of the same.

join partners who have not joined in petition.

Release by partner void.

But not liable to costs of suit.

XLVIII. AND BE IT FURTHER ENACTED, that all powers vested in any such insolvent or insolvents as are aforementioned, which he, she, or they might lawfully execute, for his, her, or their benefit, might (1) be executed by his, her, or their assignees, for the benefit of his, her, or their creditors.

Assignee may execute powers vested in insolvent.

XLIX. AND BE IT FURTHER ENACTED, that from time to time, as possession is obtained of any of the estate or effects of any insolvent or insolvents, the assignee or assignees shall with all convenient speed make sale of the same; subject nevertheless to the direction and control of the Court by authority of which he or they shall have been appointed, in case any application shall be made to such Court by any insolvent, or any creditor or mortgagee, in all which cases such Court shall have full power and authority to delay or postpone the sale of any property, and to make such other order regulating the same as to such Court shall seem meet.

Assignee to sell the property, subject to direction and control of the Court.

L. "AND WHEREAS, the insolvents may be entitled to "annuities for their own lives, or other uncertain interests, "or to reversionary or contingent interests, or may have "made advances of money for the cultivation of lands, or "may be interested in property in other ways, in which "the immediate sale thereof for payment of their debts "may be very prejudicial to them and to their creditors, "and it may be proper in some cases to defer the sale of "such property, and to put it under temporary management, or to authorize the raising of money by way of

Court may consider all circumstance affecting property of insolvents;

(1) So in original.

"mortgage for payment of the debts or part of the debts "of an insolvent, and for defraying the expences attending "the execution of this act, instead of selling for such "purpose;" Be it enacted, that in all such cases it shall be lawful for the said Courts for the relief of insolvent debtors, at any time, to take into consideration all circumstances affecting any property of the prisoner which shall have been assigned under the provisions of this act; and if it shall appear to any such Court, that it would be reasonable to make any special order touching the same, it shall be lawful for such Court so to do; and to direct that so much of the said property as it may be expedient not to sell immediately, according to the provisions of this act, shall not be so sold; and from time to time to order and direct in what manner such property shall be managed, for the benefit of the creditors of such insolvent, until the same can be properly sold, or until payment of such creditors be effected, according to the provisions of this act; and to make such order touching the sale or disposition of such property as to such Court for the relief of insolvent debtors may seem reasonable and beneficial, and upon such terms and conditions, with respect to the allowance of interest on debts not bearing interest, or other circumstances, as to such Court shall seem just; and if it shall appear that the debts of any such insolvent or insolvents can be discharged by means of money raised by way of mortgage on any of the said property of the said insolvent or insolvents, instead of raising the same by sale, it shall be lawful for the said Court so to order, and to give all necessary directions for such purpose; and generally to direct all things which may be proper for the discharge of the debts of such insolvent or insolvents, as may be most consistent with the interest of such petitioner or petitioners, and of his, her, or their creditor or creditors.

may make any special order touching the same.

May defer the sale of property,

direct the management of it until sale,

regulate the sale or disposition as to allowance of interest on debts not bearing interest or otherwise,

may order property to be mortgaged instead of being sold,

and give general directions as to discharge of debts.

LI. AND BE IT FURTHER ENACTED, that the assignee or assignees of all such insolvents as are hereinbefore mentioned, shall keep accounts of the property, debts, and credits of such insolvents, whether belonging or due to or from such insolvents solely, or jointly with any other person or persons, wherein they shall enter all property of

Assignee to keep accounts of estates;

the insolvents received by them, and all payments made by them; which accounts any creditors may inspect at all seasonable times; and it shall be lawful for the Courts for the relief of insolvent debtors, at all times to summons the assignees before them, and require them to produce all books, papers, deeds, writings, and other documents in their possession, which in any way relate of the petition of the insolvent or insolvents; and if such assignee or assignees so summoned shall not come before such Courts respectively at the time appointed, or shall not bring with him or them such documents as are aforementioned, it shall be lawful for such Courts respectively, to issue attachments, and to cause such assignee and assignees to be brought before them, and to commit such assignee or assignees to prison until he or they shall submit to the Court, by which he or they shall have been summoned.

open to creditors;

Court may summon assignee, and require production of books, &c.

Assignee liable to attachment for disobedience thereto.

LII. AND BE IT FURTHER ENACTED, that whenever it shall appear by the accounts of any assignee or assignees that a dividend may be beneficially made amongst the creditors, it shall be lawful for any Court for the relief of insolvent debtors, to summon before it the assignee or assignees, and to direct that such public notice, as to the Court may seem meet, shall be given of a further hearing of the petition on a day certain, for the purpose of making a dividend; and on the day so fixed, the insolvent or insolvents, and assignee or assignees, and any creditors who shall be willing to do so, shall attend the Court, and all objections to the schedule of the insolvent or insolvents, and to the accounts or conduct of the assignees, and any claims of any creditors which shall not have been previously determined, shall be then heard and determined, either by such Court immediately, or upon a reference to the examiner or other proper officer of such Court; and it shall be lawful for such Court to examine the insolvent or insolvents, assignees, and any witnesses, on oath, and either at that time to declare a dividend, and to direct that the same shall be paid by the assignee or assignees, or to postpone such declaration and direction of the same until a further hearing and to make such order in the matter of the petition, and respecting the same, as shall be

When assignee's accounts shew that dividend may be made,

Court to summon assignee,

and direct notice of hearing,

all parties may attend, and objection to schedule, accounts and disputed claims heard and determined, or referred to examine;

And insolvent and others examined;

and dividend declared or

other order made.

most conducive to the attainment of the benefit intended by the several provisions of this act.

No dividend to joint-creditors out of separate estate, until separate creditors paid in full, nor è converso.

LIII. PROVIDED ALWAYS, and be it enacted, that it shall not be lawful for such Court to order any dividend to be made amongst the joint creditors out of the separate estate, until the separate creditors shall have been paid in full, nor to order any dividend to be made to the separate creditors out of the joint estate, until all the joint creditors shall have been paid in full; in which latter case it shall be lawful for such Court to order such dividend to be made among the separate creditors, out of such interest in the joint estate, as such insolvent shall appear to be separately entitled to.

Dividend to separate creditors according to insolvent's interest in joint estate.

Unless the Court certifies that all the property and creditors are in India,

then, until after 12 months' notice of petition in *London Gazette*,

Assignee to reserve 1-3rd of property to be disposed of as Court shall order, and dividend made of 2-3ds only.

LIV. PROVIDED ALWAYS, and be it further enacted, that unless it shall appear, upon reasonable proof, to be made to the satisfaction of such Court for the relief of insolvent debtors, and be so certified by such Court, that all the property of the insolvent is situate, and all the debtors and creditors, resident within the limits of the Charter of the said United Company, then until the expiration of twelve calendar months from the notice in the *London Gazette* of the petition of any insolvent, as hereinbefore mentioned, the assignee or assignees appointed by such Court shall reserve the full amount of one-third part of the property of the said insolvent collected in and received by such assignee or assignees, and shall make a dividend among the creditors of the said insolvent to the amount of the remaining two-third parts only, which third part so to be reserved as aforesaid, shall in the mean time be invested or disposed of in such way as such Court shall order and shall not remain in the hands of such assignee or Assignees; And at the expiration of the said term of twelve calendar months, it shall be lawful for the assignee or assignees of such insolvent to apply to such Court for a return of the said third part so reserved as aforesaid, in order that the same may be so distributed among the creditors as to place them all upon an equal footing; and upon such third part so reserved as aforesaid, being restored to such assignee or assignees, such assignee or assignees shall forthwith proceed to take an account of the

After 12 months assignee to apply to Court for and proceed to distribute amount reserved and fund in hand so as to place all creditors, Indian and British, on equal footing, & that rateable dividend be received.

debts of the said insolvent, and of the sum or sums which shall or may have been paid by way of dividend to any of such creditors, and shall distribute the fund then in the hands of such assignee or assignees, so as to place all the creditors of the said insolvent, whether *Indian* or *British*, upon a just and equal footing, and so as that every creditor shall receive a rateable and proportionable part of the assets of the said insolvent, according to the amount of his debt, and whether such debt be inserted or omitted in the schedule, or whether the same shall have been rightly inserted or not, and without reference to the time at which such debt shall have been claimed.

Whether debt in schedule or not.

LV. AND BE IT FURTHER ENACTED, that if any creditor whose claim shall have been established in any Court for the relief of insolvent debtors, shall not appear by himself, his attorney, or agent, at the making of any dividend, nor shall make application to receive his, her, or their share thereof, the assignee or assignees shall certify the same to such Court at its first sitting after the making of the dividend; and it shall be lawful for the Court to direct in what manner, and by whom, and upon what conditions the money so due to such creditor or creditors shall be kept for, paid to him, her, or them, or to his, her, or their lawful constituted attorney.

Where creditor for debt established absent at making of dividend.

Assignee to certify same at next sitting;

Court to direct what is to be done with such share.

LVI. AND BE IT FURTHER ENACTED, that if any assignee or assignees shall neglect to account, or to pay any difference which shall have been ordered by any Court for the relief of insolvent debtors, or in any other respect shall neglect his or their duty as assignee or assignees, it shall be lawful for such Court to summon such assignee or assignees, and to inquire into such neglect; and if such Court shall be of opinion, that the insolvent or insolvents, or his, her, or their creditors, have suffered any injury by the fault of the assignee or assignees, it shall be lawful for such Court to order the assignee or assignees to make such compensation for the same as to such Court shall seem fit; and in default of the assignee or assignees obeying the summons of such Court, or making such compensation as shall be ordered by such Court, it shall be lawful for such Court to commit the assignee or assignees who

Assignee may be ordered to make compensation to insolvents, or creditors, for losses occasioned by misconduct.

In default liable to process of contempt, or distress for amount of compensation.

shall have so offended, to the common gaol, there to remain without bail until he or they shall obey the order of such Court, or to levy, by distress and sale of the offender's goods, so much as shall be sufficient to make the compensation which shall have been ordered by such Court.

Where insolvent has fraudulently destroyed or withheld or falsified books, &c.

LVII. AND BE IT FURTHER ENACTED, that in case it shall appear to any Court for the relief of insolvent debtors, that any such insolvent has fraudulently with intent to conceal the state of his or her affairs, or to defeat the objects of this act, destroyed, or otherwise wilfully prevented or purposely withheld the production of any book, paper, or writing, relating to such of his or her affairs as are subject to investigation under this act; or kept or cause to be kept false books, or made false entries in, or withheld entries from, or wilfully altered or falsified, any such book, paper, or writing; or that such insolvent has fraudulently, with intent of diminishing the sum to be divided among his or her creditors, or of giving an undue preference to any of the said creditors, discharged or concealed any debt due to or from the said insolvent; or made away with, charged, mortgaged, or concealed any part of his or her property, of what kind soever; then it shall and may be lawful for such Court to adjudge that such insolvent shall be so discharged, and so entitled as aforesaid, so soon as he or she shall have been in custody, at the suit of some one or more of the persons as to whose debts and claims such discharge is so adjudicated, for such period or periods, not exceeding three years in the whole, as such Court shall direct, to be computed from the date of his or her petition.

Discharged or concealed debts due to or from them;

or made away, charged or concealed property;

Court may order discharge to be at any period not exceeding 3 years from petition.

Where insolvent has contracted debt fraudulently, or by breach of trust, or false pretences, or without reasonable expectation of paying, put creditors to unnecessary expense, debt for damages in crim. con.,

LVIII. AND BE IT FURTHER ENACTED, that in case it shall appear to any such Court that such insolvent shall have contracted any of the debts fraudulently, or by means of breach of trust, or by means of false pretences, or without having any reasonable or probable expectation, at the time when contracted, of paying the same; or shall have put any of his or her creditors to any unnecessary expence, by any vexatious or frivolous defence, or delay to any suit, for recovering any debt or any sum of money due from such insolvent; or shall be indebted for damages recovered

in any action for criminal conversation with the wife or for seducing the daughter or servant of the plaintiff in such action, or for breach of promise of marriage made to the plaintiff in such action, or for damages recovered in any action for a malicious prosecution, or for a libel, or for slander, or in any other action for a malicious injury done to the plaintiff therein, or in any action of tort or trespass to the person or property of the plaintiff therein, wherein it shall appear to the satisfaction of such Court, that the injury complained of was malicious; then it shall and may be lawful for such Court to adjudge that such insolvent shall be so discharged and so entitled as aforesaid forthwith, excepting as to such debts, sum or sums of money, or damages as above mentioned; and as to such debt or debts, sum or sums of money, or damages, to adjudge that such insolvent shall be so discharged and so entitled as aforesaid, as soon as he or she shall have been in custody, at the suit of the person or persons who shall be creditor or creditors for the same respectively, for a period or periods not exceeding two years in the whole, as such Court shall direct, to be computed as aforesaid.

seduction, breach of promise of marriage, malicious prosecution,—libel, or any malicious injury, or action of tort or trespass

where injury malicious.

Discharge may be forthwith except as to such debts or damages;

and as to them at any period not exceeding 2 years from petition.

LIX. AND BE IT FURTHER ENACTED, that whenever any creditor or creditors opposing such insolvent's discharge shall prove, to the satisfaction of any such Court, that such insolvent has done or committed any act, for which upon such adjudication as aforesaid, he or she may be liable to remain in such custody as aforesaid for a period not exceeding three years, to be computed as aforesaid, such Court shall adjudge the taxed costs of such opposition to be paid to such opposing creditor or creditors, out of the estate and effects of such prisoner, by his or her assignee or assignees, before any dividend made thereof; and in all other cases of opposition to an insolvent's discharge being substantiated or effectual, it shall be lawful for such Court to adjudge in like manner, if it shall seem fit; And that in case it shall appear to such Court, that the opposition of any creditor to any such insolvent's discharge was frivolous and vexatious, it shall and may be lawful for such Court to award such costs to such insolvent as shall appear to be just and

Where opposing creditor proves that insolvent has committed an act for which he is liable to be remanded for 3 years.

Court to order his costs to be paid out of estate.

In all cases of effectual opposition, costs discretionary.

Costs in cases of frivolous opposition payable to insolvent.

reasonable, to be paid by the creditor or creditors making such opposition, which shall be paid accordingly.

Court to make order pursuant to adjudication, and issue warrant to gaoler to discharge insolvent as to detainers for debts adjudicated.

LX. AND BE IT ENACTED, that where, in the matter of any such petition heard before any such Court, any adjudication shall have been made by such Court for discharge of any insolvent, order shall be made accordingly by the said Court, in pursuance of such adjudication, and such Court shall also issue a warrant or warrants to the gaoler accordingly, ordering the discharge of such insolvent from custody as to the detainers under which he or she shall then be confined, or which shall be lodged against him or her before he or she shall be out of custody, the same being for debts in respect of which such adjudication shall have been made; and that every such order of adjudication shall take effect, as from the day on which the adjudication shall have been made in that behalf; and that every such adjudication and certificate thereof and order thereupon, may be made, without specifying therein any such debt or debts, or sum or sums of money, or claims as aforesaid, or naming therein any such creditor or creditors as aforesaid, excepting so far as shall be necessary in any case in order to distinguish between the creditors as to whom any such insolvent may be adjudged to be so discharged and entitled as aforesaid forthwith, and the creditors as to whom he or she may be adjudged, to be so discharged and entitled at some future period: Provided, nevertheless, that in all cases the detainer or detainers, with respect to which any such insolvent shall have been adjudged to be discharged out of custody, he or she being then in custody thereupon, shall be specified in the warrant of such Court to be delivered to the gaoler in that behalf.

To take effect from date.

What adjudication, certificate thereupon, and order shall specify.

Proviso.

Adjudication and order to be final, except appealed against, unless obtained on false evidence, &c. in which case Court may order a rehearing.

LXI. AND BE IT FURTHER ENACTED, that every such adjudication for discharge of any insolvent as aforesaid by any such Court as aforesaid, and the order thereupon, so made as aforesaid, except in cases of appeals, shall be final and conclusive, and shall not be reviewed by such Court, unless such Court shall thereafter see good and sufficient cause to believe that such adjudication has been made on

false evidence, or otherwise improperly made or fraudulently obtained, in which case it shall and may be lawful for such Court, upon the application of such insolvent, or of any creditor of such insolvent, to order such insolvent, upon due notice, to be given to such persons, and in such manner as the said Court shall direct, to attend or to be brought up, and the said matter to be reheard before the said Court, who shall thereupon rehear the same, and shall and may, if just cause shall appear, annul the original adjudication and order thereupon made in such case, and shall have the same powers and authorities upon such rehearing as upon any original hearing in pursuance of this act, and may adjudicate in such matter accordingly; And thereupon, in case the former adjudication in the said matter shall not be confirmed, such order, certificate, and warrant shall be made as required by this act to be made upon such original adjudication; and the said Court shall and may, if necessary, remand the said insolvent to the same custody in which he or she was at the time of the former hearing, there to be subject to imprisonment as if the former adjudication therein had not been made; and thereupon all detainers which were in force against such insolvent at the time of his or her former discharge from custody, shall be deemed to be still in force against him or her, as if such former adjudication had not been made; and the gaoler and keeper of the prison to which such insolvent shall be so remanded shall and is hereby required to receive such insolvent into his custody in pursuance of such remand, for doing which the order of remand in such case shall be his sufficient warrant; And where in any case such insolvent shall refuse or neglect to appear before such Court, according to such order for rehearing as aforesaid, a copy whereof shall have been duly served on such insolvent, it shall and may be lawful for such Court to order such insolvent to be apprehended, and committed to custody to such prison, and to issue its warrant accordingly, and to cause such insolvent to be brought up for examination as often as to such Court shall seem fit: Provided always, that where, upon such rehearing, it shall appear to such Court, that such insolvent is not entitled to the benefit of this act until some future period, according to

And on rehearing annul adjudication.

If same not confirmed, may proceed as on original adjudication, and remand insolvent;

and detainers to be in force;

Gaoler to receive insolvent accordingly.

If insolvent neglect to appear on rehearing;

Court may issue warrent & commit to prison.

Proviso, if insolvent shall not appear entitled to benefit until future period,

the provisions herein contained, the said Court shall and may, if it shall appear reasonable, adjudge the discharge of such insolvent at such future period, to be calculated, without including the time during which such insolvent shall have been out of custody since the time appointed for his or her discharge by such former adjudication as aforesaid.

discharge to be calculated without including intervening time since former adjudication.

Insolvent may, after discharge, be examined as to his estate and effects, on application of the Assignee.

LXII. "AND WHEREAS THE ESTATE, both real "and personal, of any person whose discharge has been "adjudicated under this act, may not be sufficiently "described or discovered in his or her schedule so sworn "to as aforesaid, or the assistance of such person may "be necessary to adjudge, make out, recover, or manage "his or her estate and effects, for the benefit of his or "her creditors;" Be it therefore enacted, that it shall and may be lawful to and for the assignee or assignees of the estate and effects of any such person whose discharge shall have been adjudicated under this act, in case such person shall, upon application to him or her for that purpose, have refused or neglected to give the necessary information, from time to time to apply to the Court by which any such adjudication shall have been pronounced, that such person may be further examined as to any matters or things relating to his or her estate and effects by such Court; and thereupon, and also in case such person shall neglect or refuse to appear before such Court at such time and place as shall be directed by such order, or appearing, shall refuse to be sworn, or to answer such questions as shall be put to him or her relating to the discovery of his or her said estate and effects, then and in any of such cases it shall be lawful for such Court by warrant, to commit such person to gaol, there to remain without bail or main-prize until such time as he or she shall submit himself or herself to the order of such Court in that behalf, and shall answer upon oath or otherwise, as shall be required, to all such lawful questions as shall be put to him or her, in pursuance of the same, for the purposes aforesaid.

And committed for default.

Where insolvent's estate

LXIII. AND BE IT FURTHER ENACTED, that whenever it shall be made to appear to the satisfaction of any

Court for the relief of insolvent debtors, upon the application of any insolvent, his assignee or assignees, or any of his or her creditors, that the estate of such insolvent debtor, which shall have come to the hands of the assignee or assignees shall have produced sufficient to pay and discharge three-fourths of the amount of the debts, which shall have been established in such Court, or that creditors to the amount of more than one-half in number and value of the debts which shall have been so established shall signify their consent in writing thereto, it shall be lawful for such Court to inquire into the conduct of the said insolvent; and if it shall appear to such Court that the said insolvent has acted fairly and honestly toward his or her creditors, such Court shall be fully authorized and empowered thereupon to order that the said insolvent shall be for ever discharged from all liability whatsoever for or in respect of such debts so established as aforesaid; and such Court shall, in the order to be drawn up, specify and set forth the names of such creditors; and after any such order shall have been so made, no further proceedings shall be had in the matter of the petition before the Court, unless upon appeal made to the Supreme Court of Judicature of the presidency, where such Court for the relief of insolvent debtors shall be holden, as hereby authorized: Provided always, that no such order as last aforesaid, shall prevent any creditor who shall not have been resident within the limits of the Charter of the said United Company at any time between the filing of such petition and the making of such order as last mentioned, and who shall not have taken part in any of the proceedings under the said petition, from bringing any suit or action in the *East Indies*, for the purpose of obtaining execution against the goods, estate or effects of such insolvent, for any unsatisfied claim of such creditor, nor from bringing any suit or action for such claim in any Court of the United Kingdom of *Great Britain* and *Ireland*, or elsewhere, without the limits of the said United Company's Charter, against such insolvent, in the same manner, and with the like consequences and effects, as if such order as last mentioned had not been made.

has produced sufficient to pay 3-4th of debts, or on consent of creditors to more than one-half in number and value,

Court may discharge the insolvent from all liability in respect of the debts specified.

Order of discharge to specify names of creditors.

Proviso.

Not to affect creditors residing out of limits of the Charter at any time between petition and order, and not having taken part in proceedings.

If insolvent sued after such order he may plead same.

LXIV. AND BE IT FUTHER ENACTED, that if, after the making of any such order as last aforesaid, any insolvent shall, contrary to the tenor of the same, and to the true intent and meaning of this act, be sued in any Court whatsoever, it shall be lawful for such person to plead such order, and to give an office copy thereof in evidence; and if such person shall thereupon obtain a verdict or decree in his or her favour, or if the bill shall be dismissed for want of prosecution, or there shall be judgment of nonsuit, the defendant or defendants shall also be adjudged to have treble costs.

Treble costs.

Where adjudication of discharge at a future period, the petitioner may be detained or arrested, &c. till period arrives.

LXV. PROVIDED ALWAYS, and be it enacted, that in all cases where it shall have been adjudged, that any such insolvent shall be so discharged and be entitled as aforesaid at some future period, such insolvent shall be subject and liable to be detained in prison, and to be arrested and charged in custody, at the suit of any one or more of his creditors with respect to whom it shall have been so adjudged, at any time before such period shall have arrived, in the same manner as he or she would have been subject and liable thereto if this act had not passed: Provided, nevertheless, that when such period shall have arrived such insolvent shall be entitled to the benefit and protection of this act, notwithstanding that he or she may have been out of actual custody during all or any part of the time subsequent to such adjudication, by reason of such prisoner not having been arrested or detained during such time or any part thereof.

Proviso, if period arrives without having been in custody, insolvent entitled to benefit of act.

Where liable to further imprisonment.

LXVI. AND BE IT FURTHER ENACTED, that in all cases where such insolvent shall, upon such adjudication as aforesaid, be liable to further imprisonment at the suit of his or her creditor or creditors, or any or either of them, it shall be lawful at any time for the Court by which such adjudication shall be pronounced, on the application of such insolvent, to order such creditor or creditors, at whose suit he or she shall be so imprisoned, to pay to such insolvent such sum or sums of money not exceeding the rate of five sicca rupees by the week in the whole, at such

Court may order, detaining creditor to pay insolvent not exceeding five sicca rupees per week.

times, and in such manner, and in such proportions as such Court shall direct; and that, on failure of payment thereof, as directed by such Court, such Court shall order such insolvent to be forthwith discharged from custody at the suit of the creditor or creditors so failing to pay the same.

In default insolvent to be discharged.

LXVII. AND BE IT FURTHER ENACTED, that if any married woman being a prisoner, or in insolvent circumstances, within the intent and meaning of this act, shall petition to be discharged for any debt or debts under the provisions of the same, it shall be lawful for any Court for the relief of insolvent debtors, to which such petition shall be presented, to receive the same, without requiring such married woman to execute such conveyance, or assignment as may be lawfully required for other petitioners, according to the provisions of this act, but instead thereof such Court shall require such married woman, to execute a conveyance and assignment for vesting in an assignee or assignees appointed by such Court, all property, real and personal, to which she may be entitled for her separate use, whether in possession, remainder, reversion, or expectancy, or over which she shall have any power of disposition notwithstanding her coverture, or which shall be vested in any trustee or trustees, or other person or persons, for her benefit, and to deliver up all personal estate and effects of which she shall have the actual possession, except such as she may be permitted by such Court to retain, subject only to such right, title, or interest as her husband may have in the aforesaid real and personal property; all which acts she is hereby empowered to do without her husband, notwithstanding her coverture, so nevertheless as not to prejudice any right of her husband in such real and personal estate and effects respectively; and all such estate and effects, real and personal, in possession, reversion, or remainder, shall by such conveyance and assignment so to be executed under the order of such Court, be as effectually vested in the assignee or assignees, as the same might have been vested in such assignee or assignees by the conveyance or assignment of such woman, if she had been sole and unmarried, subject only to the rights of her

Mode of proceeding, where insolvent a married woman.

husband therein as aforesaid; and all provisions in this act contained touching the real and personal estate of any petitioner or petitioners, seeking to be relieved under the authority of the same, shall apply to such real and personal estate and effects of such married woman, in the same manner as the same would apply to such personal estate.

Where insolvent prisoner, a lunatic,

Gaoler to inform Court, and commission to issue.

If so found, Court may at the instance of any one, on behalf of the prisoner, order notice to be published,

of application for discharge,

and served on detaining creditor.

And thereupon proceed to discharge.

Estate by force of order for

LXVIII. AND BE IT FURTHER ENACTED, that if any such prisoner for debt as aforesaid shall be, or become of unsound mind, and be therefore incapable of taking the benefit of this act, in such manner as he or she might have done if of sound mind, the gaoler or keeper of the prison wherein the prisoner shall be, shall give information thereof to the Court for the relief of insolvent debtors of the presidency, wherein such prison shall be situated, which Court shall thereupon issue a commission to some competent person or persons, to inquire, examine, and report to such Court touching and respecting the state of the prisoner's mind; and such Court may either confirm or set aside the report of such Commissioner or Commissioners, and may, if it think fit, make further inquiry by examination of witnesses upon oath; and if such Court shall conclude that the prisoner is of unsound mind, it shall be lawful for such Court, at the instance of any person or persons on behalf of such prisoner, to order notice to be twice inserted in the gazette of such presidency, and in such notice to specify and direct that application will be made to such Court for the discharge of such prisoner on a day to be specified in such notice, being twenty days at least from the first time of publication of such notice; which notice, together with service of the notice on the creditor or creditors, at whose suit such prisoner shall be detained in custody, or his, her, or their attorney, shall be deemed sufficient to authorize such Court to proceed to the discharge of such prisoner, and such Court shall proceed accordingly, and discharge such prisoner; Provided always, that all and every estate, right, title interest in law and equity, real and personal, power, benefit, and emolument whatsoever, which if such prisoner were of sound mind, could and ought to be assigned by such prisoner, pursuant to the provisions of this act, shall by

force and virtue of the order for the discharge of such prisoner, be vested in the common or other assignee or assignees appointed by such Court, as fully and effectually, and in the same manner, and with all and every the same consequence and effect, both in fact and law, as if such prisoner had been of sound mind, and had duly conveyed the same to such common or other assignee, at the time and in the manner in this act provided.

discharge to become vested in common assignee.

LXIX. AND BE IT FURTHER ENACTED, that after the time appointed for this act to take effect, every *warrant of attorney* to confess judgment in any personal action, in any of his Majesty's Courts of Record within the *British* territories under the Government of the said United Company, and every *cognovit actionem* given by any defendant in any personal action, which shall be pending in any of the said Courts, shall, within six weeks after the execution of such warrant or cognovit, be filed, together with an affidavit of the time of the execution thereof, with the Prothonotary or other proper officer of the Court in which the judgment is confessed, or the action is pending; and every such warrant of attorney and *cognovit actionem* as aforesaid, which shall not be so filed as aforesaid, shall be deemed fraudulent, null, and void, to all intents and purposes; and if any warrant or cognovit which shall be so filed as aforesaid, shall have been given subject to any defeazance or condition, such defeazance or condition shall be written on the same paper or parchment on which such warrant or cognovit shall be written, before the time when it shalll be filed, otherwise such warrant or cognovit shall be null or void, to all intents ad purposes.

Warrants of attorney and cognovits to be deemed fraudulent and void, unless filed with Prothonotary, within six weeks after execution.

With affidavit of time of execution;

where given, subject to defeazance, same to be subscribed.

LXX. AND BE IT FURTHER ENACTED, that the Prothonotary or other proper officer of his Majesty's Court of Record, within the *British* territories under the Government of the said United Company, shall cause every warrant of attorney and *cognovit actionem* in any personal action, filed in his office, to be numbered, and shall keep a book or books in his said office, in which he shall cause to be fairly entered, an alphabetical list of all such warrants and cognovits, according to the form of a schedule annexed to

Prothonotary, to keep books for the registry of warrants and cognovits.

According to 3 G. 4. c. 39.

an act passed in the third year of his present Majesty, intituled *An Act for preventing frauds upon Creditors by secret warrants of attorney to confess judgment;* which book or books, and every warrant of attorney and *cognovit actionem,* filed as aforesaid, shall be searched and viewed at all times, upon payment of the fees lawfully established.

Court may order memorandum of satisfaction to be indorsed, where debt discharged.

LXXI. AND BE IT FURTHER ENACTED, that it shall be lawful for the Court, in which any such warrant or cognovit is filed, to order a memorandum of satisfaction to be written upon any such warrant, or cognovit, if it shall appear to such Court that the debt, for which such warrant or cognovit was given as a security, shall have been satisfied or discharged.

Punishmant for perjury in any proceeding, examination, affidavit or affirmation, under this act.

LXXII. AND BE IT FURTHER ENACTED, that if any person, in any proceeding, examination, affidavit, or affirmation had or taken under this act, shall wilfully and corruptly swear or affirm falsely, it shall be lawful for any Court, before which any such person shall be convicted of any such offence by due course of law, to order and adjudge such person, if convicted in the said United Kingdom, to be transported for any term not exceeding seven years, or if convicted in the *East Indies,* to be transported to such place, and for such term as the Court shall direct, or in either case to order and adjudge that such person shall be imprisoned and fined, or imprisoned or fined only, for such time, and to such amount, and in such manner, as the same Court shall direct.

Embezzlement or concealment by insolvent or others, of his estate, a misdemeanor.

LXXIII. AND BE IT FURTHER ENACTED, that if any insolvent or other person shall wilfully and fraudulently embezzle or conceal any part of the real and personal estate or effects of any insolvent or insolvents, who shall have filed a petition for relief, or against whom any petition shall have been filed in any of the said Courts for the relief of insolvent debtors, such person shall be guilty of a misdemeanor; and it shall be lawful for any Court, before which any such person shall be convicted of any such offence by due course of law, to order and adjudge that such

Subject to transportation, imprisonment, and fine.

person shall be transported to such place, and for such term of years as the said Court shall direct, or to order and adjudge that such person shall be imprisoned and fined, or imprisoned or fined only, for such time, and to such amount, and in such manner, as the same Court shall direct.

On application of assignee fines imposed for the foregoing offences, may be paid to him.

LXXIV. AND BE IT FURTHER ENACTED, that whenever any person or persons shall have been ordered and adjudged, under the provisions of this act, to pay any fine for any forgery, perjury, embezzlement, or concealment, and such fine shall have been paid, it shall be lawful for any assignee or assignees, in whom the estate and effects of any insolvent or insolvents shall be duly vested, according to the provisions of this act, to apply to the Court by which such fine shall have been imposed; and if it shall be proved to the satisfaction of the same Court, that the creditors, for whose benefit the said assignee or assignees shall hold in trust the said estate and effects, have been defrauded, or have incurred loss, by means of such forgery, perjury, embezzlement, or concealment, the said Court, by which the said fine shall have been imposed, shall pay the same after deducting the costs of prosecution, to the said assignee or assignees for the use and benefit of the said creditors: Provided always, that if no such application shall be made, by such assignee or assignees, within one year after any such fine shall have been paid, it shall be lawful for the Court by which such fine shall have been imposed, to appropriate, apply, and pay over such fine to such uses, purposes, and persons, and in such manner as any other fine, imposed by the same Court for any forgery perjury, or other crime, or misdemeanor, may be lawfully appropriated, applied, and paid over.

Proviso, if no application, to be applied as other fines imposed by Court.

Affidavits and affirmations may be taken before Court, Commissioner or other person appointed by the Court, or any Judge or Commissioner of

LXXV. AND BE IT ENACTED, that all affidavits and affirmations to be used before any Court for the relief of insolvent debtors, or any officer of such Court, shall and may be sworn and affirmed before such Court, or any commissioner or other person appointed by such Court for that purpose, or any Judge or commissioner for taking affidavits in any of his Majesty's Courts of Record within

King's Court, &c.

the limits of the said United Company's Charter, or before any master or master extraordinary in Chancery in *England* or *Ireland*, or any magistrate authorized to take affidavits or affirmations in *Scotland*.

No person having had the benefit of this act to be entitled to it again within five years, except on consent of majority in number and value of creditors.

or unless Court satisfied of party's endeavours to pay all just debts, and that subsequent debts necessarily incurred for maintenance,

or insolvency has arisen from misfortune.

LXXVI. PROVIDED ALWAYS, and be it further enacted, that no person who shall have been at any time discharged by virtue of this act, shall again be entitled to the benefit thereof, within the space of five years after such discharge, unless a majority in number and value of the creditors, against whom such person shall seek to be discharged by virtue of this act, shall signify his, her, or their assent to such discharge; or unless it shall be made to appear to the satisfaction of the Court for the relief of insolvent debtors, to which application for such discharge shall be made, that such person has, since his or her former discharge, endeavoured by industry and frugality to pay all just demands upon him or her, and has incurred no unnecessary expence, and that the debts, which such person has incurred subsequent to such former discharge, have been necessarily incurred for the maintenance of such person, or his or her family, or that the insolvency of such person has arisen from misfortune, or from inability to acquire subsistence for himself or herself, and his or her family.

In actions under this act against Magistrate or officer, the general issue may be pleaded.

Treble costs.

LXXVII. AND BE IT FURTHER ENACTED, that if any action of escape, or any other suit or action, shall be brought against any magistrate, or officer, or any other person, for performing the duty of his office or appointment, in pursuance of this act, he or they may plead the general issue, and give this act in evidence; and if the plaintiff shall be nonsuited, or discontinue his or her action, or a verdict shall pass against him or her, or judgment shall be given for the defendant upon demurrer, the defendant shall have treble costs.

Officers of Court to produce proceedings, and give copies, when required

LXXVIII. AND BE IT FURTHER ENACTED, that the proper officer of the several Courts for the relief of insolvent debtors shall, on the reasonable request of any such insolvent as aforesaid, or of any creditor or creditors of

such insolvent, or his or their attorney, produce and shew to such insolvent, creditor or creditors, and his, her, or their attorney, at such times as such Courts respectively shall direct, every petition, schedule, order of adjudication, and all other orders and proceedings made and had relating to such insolvent, and all books, papers, and writings filed in such matter, and permit him, her or them to inspect and examine the same, and shall provide for any such insolvent, or creditor or creditors, or his, her, or their attorney, requiring the same, a copy or copies of such petition and other proceedings, or of such part thereof as shall be required, receiving such fee as such Court shall appoint for so providing the same; and that a copy of such petition, schedule, order, and other orders and proceedings, purporting to be signed by the officer in whose custody the same shall be, or his deputy, certifying the same to be a true copy of such petition, schedule, order or other proceeding, and sealed with the seal of the said Courts respectively, shall, at all times be admitted in all Courts whatever, and before Commissioners of bankrupt and Justices of the Peace, as sufficient evidence of the same, without any proof whatever given of the same, further than that the same is sealed with the seal of such Courts respectively as aforesaid.

on receiving due fees.

All copies signed by officer and under seal of Court, to be good evidence on proof of seal.

LXXIX. AND BE IT FURTHER ENACTED, that no conveyance, assignment, letter of attorney, affidavit, certificate, or other proceeding, instrument, or writing whatsoever, before or under any order of any such Courts for relief of insolvent debtors, nor any copy thereof, nor any advertisement inserted in any newspaper by direction of any such Court, relating to matters within the jurisdiction of such Court, shall be liable to or chargeable or charged with the payment of any stamp or other duty whatsoever; and that no sale of any real or personal estate of any such insolvent as aforesaid, for the benefit of his or her creditors under this act, shall be liable to any auction duty.

No conveyance or other instrument or proceeding under any order of Court, liable to stamp duty.

Nor sale to auction duty.

LXXX. AND BE IT FURTHER ENACTED, that his Majesty's Supreme Courts of Judicature at *Calcutta*, *Madras*, and *Bombay* respectively, shall respectively

The Supereme Courts may make rules for facilitating the

relief hereby intended.

have power to make all necessary and reasonable rules, for facilitating and carrying into effect, within their respective jurisdictions, the relief intended to be given by this act, in cases for which sufficient provision has not been thereby made.

Continuance of act.

LXXXI. AND BE IT FURTHER ENACTED, that this act shall continue in force until the first day of *March* one thousand eight hundred and thirty-three. (1)

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(1) Extended to the 1st March 1836, by 2 W. 4. c. 43, and by the 6 & 7 W. 4. c. 47, continued to the 1st March 1839, and from thence until the end of the then next Session of Parliament, *post*. See also 4 & 5 W. 4. c. 79, amending the law relating to Insolvent Debtors, *post*.

STAT. 9 GEO. 4. CAP. 74.

"*An Act for improving the Administration of* Crimi-
" nal Justice *in the* East Indies."

[25*th July* 1828.]

" WHEREAS many wholesome alterations have lately
" been made in the Criminal Law of *England*, and the
" Administration thereof, by authority of Parliament; and
" it is expedient that some of the said alterations should
" be extended to the *British* territories under the Go-
" vernment of the United Company of merchants of *Eng-*
" *land* trading to the *East Indies*;" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that this act shall commence and take effect on and from the first day of *March*, one thousand eight hundred and twenty-nine, and shall extend to all persons and all places, as well on land as on the high seas, over whom or which the criminal jurisdiction of any of his Majesty's Courts of justice erected or to be erected within the *British* territories under the Government of the United Company of merchants of *England* trading to the *East Indies* does or shall hereafter extend.

From the 1st of March 1829, this act to take effect throughout the jurisdiction of the King's Courts in the East Indies.

II. AND BE IT ENACTED, that where any person shall be taken on a charge of felony, or suspicion of felony, before one or more Justice or Justices of the Peace, and the charge shall be supported by positive and credible evidence of the fact, or by such evidence as, if not explained or contradicted, shall, in the opinion of the justice or justices, raise a strong presumption of the guilt of the person

Who may be admitted to bail on a charge of felony, and who may not.

charged, such person shall be committed to prison by such justice or justices in the manner hereinafter mentioned; but, if there shall be only one justice present, and the whole evidence given before him shall be such, as neither to raise a strong presumption of guilt, nor to warrant the dismissal of the charge, such justice shall order the person charged to be detained in custody, until he or she shall be taken before two justices at the least; and where any person so taken, or any person in the first instance taken before two Justices of the Peace, shall be charged with felony, or on suspicion of felony, and the evidence given in support of the charge shall in their opinion not be such, as to raise a strong presumption of the guilt of the person charged, and to require his or her committal, or such evidence shall be adduced on behalf of the person charged, as shall in their opinion weaken the presumption of his or her guilt, but there shall notwithstanding appear to them, in either of such cases, to be sufficient ground for judicial inquiry into his or her guilt, the person charged shall be admitted to bail by such two justices in the manner hereinafter mentioned: Provided always, that nothing herein contained shall be construed to require any such justice or justices to hear evidence on behalf of any person so charged as aforesaid, unless it shall appear to him or them to be meet and conducive to the ends of justice to hear the same: Provided also, that in all cases where any person or persons charged as aforesaid shall be brought before one justice, at any place beyond the local limits of the jurisdiction of any of his Majesty's Courts of Justice erected or to be erected within the *British* territories under the Government of the said United Company, it shall be lawful for such justice alone either to commit such person to prison or to admit him to bail as hereinbefore directed.

Before any person charged with felony, &c. shall be bailed or committed, the justices shall take down in writing the

III. AND BE IT ENACTED, that the Justice or Justices of the Peace, before he or they shall admit to bail or commit to prison any person arrested for felony or on suspicion of felony, shall take the examination of such person, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or

as much thereof as shall be material, into writing, and the two justices shall certify such bailment in writing; and every such justice shall have authority to bind by recognizance all such persons as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next Court of oyer and terminer or gaol delivery, or superior Criminal Court or Sessions of the Peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused; and such justices and justice respectively shall subscribe all such examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the Court in which the trial is to be, before or at the opening of the Court.

examination, &c and bind witnesses to appear at the trial.

Examinations, &c. to be delivered to the Court.

IV. AND BE IT ENACTED, that every Justice of the Peace before whom any person shall be taken on a charge of misdemeanor, or suspicion thereof, shall take the examination of the person charged, and the information upon oath of those who shall know the facts and circumstances of the case, and shall put the same, or as much thereof as shall be material, into writing, before he shall commit to prison or require bail from the person so charged; and in every case of bailment shall certify the bailment in writing, and shall have authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and shall subscribe all examinations, informations, bailments, and recognizances, and deliver or cause the same to be delivered to the proper officer of the Court in which the trial is to be, before or at the opening of the Court, in like manner as in cases of felony.

Duty of justice on charges of misdemeanor.

V. AND BE IT ENACTED, that every coroner, upon any inquisition before him taken, whereby any person shall be indicted for manslaughter or murder, or as an accessory to murder before the fact, shall put in writing the evidence given to the jury before him, or as much thereof as shall be material, and shall have authority to bind by recognizance all such persons as know or declare any thing material touching the said manslaughter or murder, or the said offence of being accessory to murder, to appear at the

Duty of coroner.

next Court of oyer and terminer or gaol delivery, or superior criminal Court of Sessions, at which the trial is to be, then and there to prosecute or give evidence against the party charged; and every such coroner shall certify and subscribe the same in evidence, and all such recognizances, and also the inquisition before him taken, and shall deliver the same to the proper officer of the Court in which the trial is to be, before or at the opening of the Court.

Penalty on justices and coroner acting contrary to these provisions.

VI. AND BE IT ENACTED, that if any justice or coroner shall offend in any thing contrary to the true intent and meaning of these provisions, the Court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition ought to have been delivered, shall upon examination and proof of the offence in a summary manner, set such fine upon every such justice or coroner as the Court shall think meet.

Accessory before the fact may be tried as such, or as a substantive felon, by any Court which has jurisdiction to try the principal felon, although the offence be committed on the high seas or elsewhere.

VII. AND for the more effectual prosecution of accessories before the fact to felony; Be it enacted, that if any person shall counsel, procure, or command any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding shall be deemed guilty of felony, and may be indicted and convicted either as an accessory before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon, or may be indicted and convicted of a substantive felony, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice, and may be punished in the same manner as any accessory before the fact to the same felony, if convicted as an accessory, may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas, or at any place on land, whether

within his Majesty's dominions or without; and that in case the principal felony, and the offence of counselling, procuring, or commanding, shall have been committed in different places, the last mentioned offence may be inquired of, tried, determined, and punished in any of his Majesty's Courts of justice within the *British* territories under the Government of the said United Company, having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any such offence, whether as an accessory before the fact or as for a substantive felony, shall be liable to be again indicted or tried for the same offence.

If the offence be committed in different places, accessory may be tried in any of the King's Courts in India having jurisdiction.

VIII. AND BE IT ENACTED, that if any person shall become an accessory after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any Court which shall have jurisdiction to try the principal felon, in the same manner as if the act by reason whereof such person shall have become an accessory had been committed at the same place as the principal felony, although such act may have been committed either on the high seas or at any place on land, whether within his Majesty's dominions or without; and that in case the principal felony, and the act by reason whereof any person shall have become accessory, shall have been committed in different places, the offence of such accessory may be inquired of, tried, determined, and punished in any of his Majesty's Courts of juctice within the *British* territories under the Government of the said United Company, having jurisdiction to try either of the said offences: Provided always, that no person who shall be once duly tried for any offence of being an accessory, shall be liable to be again indicted or tried for the same offence.

Accessory after the fact may be tried by any Court which has jurisdiction to try the principal felon, although offence committed on high seas, or elsewhere.

If the offence be committed in different places, accessory may be tried in any Court having jurisdiction.

IX. AND BE IT ENACTED, that if any principal offender shall be in anywise convicted of any felony, it shall be lawful to proceed against any accessory, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon shall die or be pardoned, or otherwise delivered

Accessory may be prosecuted after conviction of the principal, though the principal be not attainted.

before attainder; and every such accessory shall suffer the same punishment, if he or she be in anywise convicted, as he should have suffered if the principal had been attainted.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

X. AND BE IT ENACTED, that in any indictment or information for any felony or misdemeanor wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to or be in the possession of more than one person, whether such persons be partners in trade, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others, as the case may be; and whenever in any indictment or information for any felony or misdemeanor it shall be necessary to mention, for any purpose whatsoever, any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to extend to all joint-stock companies and trustees.

Indictment not to abate by dilatory plea of misnomer.

XI. AND BE IT ENACTED, that no indictment or information shall be abated by reason of any dilatory plea of misnomer or of want of addition or of wrong addition of the party offering such plea, if the Court shall be satisfied by affidavit or otherwise of the truth of such plea; but in such case the Court shall forthwith cause the indictment or information to be amended according to the truth, and shall call upon such party to plead thereto, and shall proceed as if no such dilatory plea had been pleaded.

What defects shall not vitiate an indictment after verdict, or otherwise.

XII. AND BE IT ENACTED, that no judgment upon any indictment or information for any felony or misdemeanor whether after verdict or outlawry, or by confession, default, or otherwise shall be stayed or reversed for want of the averment of any matter unnecessary to be proved, nor for the omission of the words "as appears by the record" or of the words "with force and arms," or of the words "against the peace;" nor for the insertion of the words "against the form of the statute," instead of the words "against the form of the statutes" or *vice versâ*; nor for

that any person or persons, mentioned in the indictment, or information, is or are designated by the name of office or other descriptive appellation instead of his, her, or their proper name or names; nor for omitting to state the time at which the offence was committed, in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or exhibiting the information, or on an impossible day, or on a day that never happened; nor for want of a proper or perfect venue, where the Court shall appear by the indictment or information to have had jurisdiction over the offence.

What shall not be sufficient to stay or reverse judgment after the verdict.

XIII. AND BE IT ENACTED, that no judgment after verdict, upon any indictment or information for any felony, or misdemeanor, shall be stayed, or reversed for want of a similiter, nor by reason that the jury-process has been awarded to a wrong officer, or upon an insufficient suggestion, nor for any misnomer or misdescription of the officer returning such process, or of any of the jurors, nor because any person has served upon the jury who has not been returned as a juror by the sheriff or other officer; and that, where the offence charged has been created by any statute, or subjected to a greater degree of punishment, the indictment or information shall, after verdict, be held sufficient to warrant the punishment prescribed by the statute, if it describe the offence in the words of the statute.

A plea of not guilty shall put the prisoner on his trial by jury.

XIV. AND BE IT ENACTED, that if any person, being arraigned upon any indictment or inquisition for treason, felony, or piracy, shall plead thereto a plea of not guilty, he shall by such plea, without any further form, be deemed to have put himself upon the country for trial, and the Court shall, in the usual manner, order a jury for the trial of such person accordingly.

If he refuse to plead, Court may order a plea of not guilty to be entered.

XV. AND BE IT ENACTED, that if any person, being arraigned upon or charged with any indictment, inquisition, or information for treason, felony, piracy, or misdemeanor shall stand mute, or will not answer directly to such indictment, inquisition or information, in every such

case, it shall be lawful for the Court, if it shall so think fit, to order the proper officer to enter a plea of not guilty on behalf of such person, and the plea so entered shall have the same force and effect as if such person had actually pleaded the same.

Every challenge beyond the legal number shall be void.

XVI. AND BE IT ENACTED, that if any person arraigned upon any indictment or inquisition, for any treason, felony, or piracy, shall challenge peremptorily a greater number of the men returned to be of the jury than such person is entitled by law so to challenge in any of the said cases, every peremptory challenge beyond the number allowed by law in any of the said cases, shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made.

Attainder of another crime not pleadable.

XVII. AND BE IT ENACTED, that no plea setting forth any attainder shall be pleaded in bar of any indictment, unless the offence stated in the plea be substantially the same offence as that charged in the indictment.

Jury not to inquire of prisoner's lands, &c.

XVIII. AND BE IT ENACTED, that where any person shall be arraigned upon any indictment or inquisition for treason or felony, the jury impannelled to try such persons, shall not be charged to inquire concerning his lands, tenements, or goods, nor whether he fled for such treason or felony.

Benefit of clergy abolished.

XIX. AND BE IT ENACTED, that benefit of clergy with respect to persons convicted of felony shall be abolished.

What felonies only shall be capital.

XX. AND BE IT ENACTED, that no person convicted of felony shall suffer death, unless it be for some felony which was excluded from the benefit of clergy before the day hereinbefore mentioned for this act taking effect, or which shall be made punishable with death by this act or by some statute to be passed hereafter.

Felonies, not capital, to be punished under the acts, if any, relating thereto, otherwise under this act.

XXI. AND BE IT ENACTED, that every person convicted of any felony not punishable with death, shall be punished in the manner prescribed by the statute or statutes specially relating to such felony; and that every person convicted of any felony for which no punishment hath

been or hereafter may be specially provided, shall be deemed to be punishable under this act, and shall be liable, at the discretion of the Court, to be transported to such place as such Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit) in addition to such imprisonment.

The Court may order hard labour or solitary confinement as part of the sentence of imprisonment.

XXII. AND BE IT ENACTED, that where any person shall be convicted of any offence punishable under this act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction, and also to direct that the offender shall be kept in solitary confinement for any portion or portions of such imprisonment, or of such imprisonment with hard labour, as to the Court in its discretion shall seem meet.

If a person under sentence for another crime is convicted of felony, the Court may pass a second sentence, to commence after the expiration of the first.

XXIII. AND BE IT ENACTED, that wherever sentence shall be passed for felony on a person already imprisoned under sentence for another crime, it shall be lawful for the Court to award imprisonment for the subsequent offence, to commence at the expiration of the imprisonment to which such person shall have been previously sentenced; and where such person shall be already under sentence either of imprisonment or of transportation, the Court, if empowered to pass sentence of transportation, may award such sentence for the subsequent offence, to commence at the expiration of the imprisonment or transportation to which such person shall have been previously sentenced, although the aggregate term of imprisonment or transportation respectively may exceed the term for which either of those punishments could be otherwise awarded.

Punishment for a subsequent felony.

XXIV. AND BE IT ENACTED, that if any person shall be convicted of any felony not punishable with death, committed after a previous conviction for felony, such person shall, on such subsequent conviction, be liable, at the discretion of the Court, to be transported to such place as such Court shall direct, for life, or for any term not less

than seven years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment; and in an indictment for any such felony committed after a previous conviction for felony, it shall be sufficient to state that the offender was at a certain time and place convicted of felony, without otherwise describing the previous felony; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or by the deputy of such clerk or officer (for which certificate a fee of three sicca rupees, and no more, shall be demanded or taken,) shall, upon proof of the identity of the person of the offender, be sufficient evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed the same; and if any person other than such clerk, officer, or or deputy, shall sign any such certificate as such clerk, officer, or deputy, or if any person shall utter any such certificate with a false or counterfeit signature thereto, every such offender shall be guilty of felony, and being lawfully convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Form of indictment for the subsequent felony.

What will be sufficient proof of the first conviction.

Punishment for signing or uttering false certificate of conviction.

XXV. AND BE IT ENACTED, that all offences prosecuted in any of his Majesty's Courts of Admiralty shall, upon every first and subsequent conviction, be subject to the same punishments, whether of death or otherwise, as if such offence had been committed upon the land.

Admiralty offences, punishable as if committed on land.

XXVI. AND BE IT ENACTED, that wherever this or any other statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence or the subject matter thereof, or

Rule for interpreting all criminal statutes.

the offender, or the party affected or intended to be affected by the offence, shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters as well as one matter, and several persons as well as one person, and females as well as males, and bodies corporate, as well as individuals, unless it be otherwise especially provided, or there be something in the subject or context repugnant to such construction; and wherever any forfeiture or penalty is payable to a party aggrieved, it shall be payable to a body corporate in every case where such body shall be the party aggrieved.

Court may abstain from pronouncing judgment of death on persons convicted of any felonies, except murder, and order sum to be entered of record.

XXVII. AND BE IT ENACTED, that whenever any person shall be convicted of any felony, except murder, for which he shall by law be liable to suffer death, and the Court before which such offender shall be convicted shall be of opinion, that the particular circumstances of the case do not require that judgment of death should be pronounced, but that such offender is a fit and proper subject either to be recommended to the royal mercy, or to be ordered to be transported under the authority of this act, it shall and may be lawful for such Court, if it shall think fit so to do, to direct the proper officer then being present in Court to require and ask, whereupon such officer shall require and ask, if such offender hath or knoweth any thing to say why judgment of death should not be recorded against such offender; and in case such offender shall not allege any matter or thing sufficient in law to arrest or bar such judgment, the Court shall, and may, and is hereby authorized, to abstain from pronouncing judgment of death upon such offender, and instead of pronouncing such judgment, to order the same to be entered of record, and thereupon such proper officer as aforesaid shall, and may, and is hereby authorized, to enter judgment of death on record against such offender in the usual and accustomed form, and in such and the same manner as is now used, and as if judgment of death had actually been pronounced in open Court against such offender by the Court before which such offender shall have been convicted.

Record of judgment to have the same effect as if pronounced.

XXVIII. AND BE IT FURTHER ENACTED, that a record of every such judgment so entered as aforesaid, shall have the like effect to all intents and purposes, and be followed by all the same consequences, as if such judgment had actually been pronounced in open Court, and the offender had been reprieved by the Court.

Court may order capital offenders to be transported instead of being left for execution.

XXIX. AND BE IT ENACTED, that when any person shall be convicted of any felony for which judgment of death shall be pronounced or recorded against him, it shall and may be lawful for the Court, instead of leaving such judgment of death to be executed on such offender, to order such offender to be transported to such place as the Court shall direct, either for life or for such term of years as the Court shall order.

Governor in Council to take order for performance of such orders of transportation.

XXX. AND BE IT ENACTED, that, where any offender shall be ordered or sentenced to be transported by any Court, the Governor in Council of the presidency, or other chief officer of the place where the conviction shall be had, shall, and he is hereby required, to take order for the due performance of such sentence of transportation accordingly: Provided always, that it shall not be lawful for any such Court to order the transportation of any person, being a native of the *East Indies*, and not born of *European* parents, to the eastern coast of *New South Wales* or any of the islands adjacent thereto.

Proviso for natives of India not to be sent to New South Wales.

Persons returning from transportation into the territories of the Company, &c.

XXXI. AND BE IT ENACTED, that if any offender who shall be ordered by any Court to be transported for any term of life or years, shall be found within any of the *British* territories within the limits of the said United Company's Charter, except the place to which he shall have been so ordered to be transported, or shall come into any part of this United Kingdom, before the end of his term, and shall be convicted thereof, he shall be liable to be punished as a person attainted of felony, and to suffer death accordingly: Provided nevertheless, that nothing herein contained shall be construed or taken to prevent his Majesty from extending his royal mercy to any such

His Majesty may extend his

offender, and allowing his return from such place of transportation. (1)

mercy to offenders.

XXXII. AND BE IT ENACTED, that on any prosecution by indictment or information, either at common law or by virtue of any statute, against any person, for forging or counterfeiting any deed, writing, instrument, or other matter whatsoever, or for uttering any deed, writing, instrument, for other matter whatsoever, knowing the same to be forged or counterfeited, or for being accessory before or after the fact, to any such offence, if the same be a felony, or for aiding, abetting, or counselling the commission of any such offence, if the same be a misdemeanor, no person shall be deemed to be an incompetent witness in support of any such prosecution, by reason of any interest which such person may have or be supposed to have in respect of such deed, writing, instrument, or other matter.

The party whose name is forged shall be a competent witness in prosecutions for forgery.

XXXIII. AND BE IT DECLARED AND ENACTED, that where the King's Majesty shall be pleased to extend his royal mercy to any offender convicted of any felony punishable with death or otherwise, and by warrant under his sign manual, countersigned by one of his principal secretaries of State, shall grant to such offender either a free or a conditional pardon, the discharge of such offender out of custody in the case of a free pardon, and the performance of the condition in the case of a conditional pardon, shall have the effect of a pardon under the great seal for such offender as to the felony for which such pardon shall be so granted: Provided always, that no free pardon, nor any such discharge in consequence thereof, nor any conditional pardon, nor the performance of the condition thereof, in any of the cases aforesaid, shall prevent or mitigate the punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any felony committed after the granting of any such pardon.

Effect of free or conditional pardon to a convict.

XXXIV. AND BE IT ENACTED, that where any offender hath been or shall be convicted of any felony, and hath

Every punishment for felony,

(1) This is no longer a capital felony in England, though it remains so here. See 4 & 5 W. 4. c. 67, repealing 5 G. 4. c. 84.

after it has been endured shall have the effect of a pardon under the great seal.

endured or shall endure the punishment which hath been or shall be adjudged or ordered in respect thereof, the punishment so endured hath and shall have the like effects and consequences as a pardon under the great seal, as to the felony whereof the offender was so convicted: Provided always, that nothing herein contained, nor the enduring of such punishment, shall prevent or mitigate any punishment to which the offender might otherwise be lawfully sentenced on a subsequent conviction for any other felony.

No misdemeanor (except perjury) shall render a party an incompetent witness after punishment.

XXXV. AND BE IT ENACTED, that where any offender hath been or shall be convicted of any misdemeanor which renders the parties convicted thereof incompetent witnesses, (except perjury or subornation of perjury,) and hath endured or shall endure the punishment to which such offender hath been or shall be adjudged for the same, such offender shall not, after the punishment so endured, be deemed to be by reason of such misdemeanor an incompetent witness in any Court or proceeding, civil or criminal. (1)

Affirmations of Quakers or Moravians, &c. to be admitted in all cases.

XXXVI. AND BE IT ENACTED, that every Quaker or Moravian, who shall be required to give evidence in any case whatsoever, criminal or civil, shall, instead of taking an oath in the usual form, be permitted to make his or her solemn affirmation or declaration in the words following; that is to say, "I *A. B.* do solemnly, sincerely, and truly declare and affirm;" and that every native of any country within the limits of the charter of the said United Company, who may be required to give evidence in any case whatsoever, criminal or civil, and who shall object on the ground of any religious scruple to take an oath in the usual form, may, at the discretion of the Court, be permitted to make his or her solemn affirmation or declaration in such manner and form as the Court shall deem sufficiently binding upon his or her conscience, which said affirmation or declaration shall be of the same force and

(1) By Act No. 19, of 1837, *post*, no conviction of any offence whatever shall render a person an incompetent witness.

effect in all Courts of justice and other places, where by law an oath is required, as if such Quaker, Moravian, or native had taken an oath in the usual form; and if any person making such affirmation or declaration shall be convicted of having wilfully, falsely, and corruptly affirmed or declared any matter or thing which if the same had been sworn in the usual form, would have amounted to wilful and corrupt perjury, every such offender shall be subject to the same pains, penalties, and forfeitures to which persons convicted of wilful and corrupt perjury, are subject.

All persons to be sworn according to the forms of their respective religions.

XXXVII. AND BE IT ENACTED, that all persons, who by any laws are now required to take an oath upon the Holy Evangelists, or in any other manner, for the purpose of sitting or acting as members of any Court, civil or criminal, or for any other purpose whatsoever, may, instead thereof, be sworn according to the forms of their respective religions.

Aiders and abettors in felonies and misdemeanors against this act, how punishable,

XXXVIII. AND BE IT ENACTED, that in case of any felony punishable under this act, every principal in the second degree, and every accessory before the fact, shall be punishable with death, or otherwise, in the same manner as the principal in the first degree is by this act punishable; and every accessory after the fact to any felony punishable under this act, (except only a receiver of stolen property,) and an accessory after the fact to murder, shall, on conviction, be liable to be imprisoned for any term not exceeding two years; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanor punishable under this act, shall be liable to be indicted and punished as a principal offender.

exception of receivers.

Aiders and abettors in offences punishable on a summary conviction.

XXXIX. AND BE IT ENACTED, that if any person shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person shall, on conviction before a Justice of the Peace, be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same

forfeiture and punishment to which a person guilty of a first, second, or subsequent offence, as a principal offender is by this act made liable.

Apprehension of offenders caught in the fact.

XL. AND BE IT ENACTED, that any person found committing any offence punishable either upon indictment or upon summary conviction, by virtue of this act, may be immediately apprehended without a warrant by any peace officer, or by the party aggrieved, or by his servant, or any person authorized by him, and forthwith taken before some neighbouring Justice of the Peace, to be dealt with according to law; And if any credible witness shall prove upon oath before a Justice of the Peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any such offence shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; And any person to whom any property shall be offered to be sold, pawned, or delivered, if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to carry before a Justice of the Peace, the party offering the same, together with such property, to be dealt with according to law.

A justice, upon good grounds of suspicion, may grant a search warrant.

Any person to whom property suspected to be stolen, &c. is offered, may seize the party offering.

Summary proceedings to be commenced within three months.

XLI. AND BE IT ENACTED, that the prosecution for every offence punishable on summary conviction under this act, shall be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved shall be admitted in proof of the offence.

Mode of compelling the appearance of persons punishable on summary conviction.

XLII. AND BE IT ENACTED, that where any person shall be charged on the oath of a credible witness, before any Justice of the Peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode,) the justice may either proceed to hear and

determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself, or some other Justice of the Peace, or the justice, before whom the charge shall be made, may (if he shall so think fit) without any previous summons, (unless where otherwise specially directed) issue such warrant, and the justice before whom the person charged shall appear, or be brought, shall proceed to hear and determine the case.

Application of forfeitures and penalties on summary convictions.

XLIII. AND BE IT ENACTED, that every sum of money which shall be forfeited for the value of any property stolen or taken, or for the amount of any injury done, (such value or amount to be assessed in such case by the convicting justice,) shall be paid to the party aggrieved, if known, except where such party shall have been examined in proof of the offence; or when the party aggrieved is unknown, such sum shall be applied in the same manner as the penalty: Provided always, that where several persons shall join in the commission of the same offence, and shall upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property, or to the amount of the injury, in every such case, no further sum shall be paid to the party aggrieved, than that which shall be forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders, shall be applied in the same manner as any penalty, imposed by a Justice of the Peace, is herein directed to be applied.

Proviso.

If forfeiture or penalty on conviction not paid, the justice may commit the party

to gaol or house of correction, or hard labour.

Scale of imprisonment

XLIV. AND BE IT ENACTED, that in every case of a summary conviction under this act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid either immediately after the conviction or within such period as the justice shall, at the time of the conviction, appoint, it shall be lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common gaol, or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where

the amount of the sum forfeited or of the penalty imposed, or of both, (as the case may be,) together with the costs, shall not exceed fifty sicca rupees, and for any term not exceeding four calendar months, where the amount, with costs, shall not exceed one hundred sicca rupees, and for any term not exceeding six calendar months, in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount, with costs.

The justice may discharge the party from his conviction in certain cases.

XLV. PROVIDED ALWAYS, and be it enacted, that where any person shall be summarily convicted before a Justice of the Peace, of any offence against this act, and it shall be a first conviction, it shall be lawful for the justice, if he shall so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as shall be ascertained by the justice.

A summary conviction satisfied shall be a bar to any other proceeding for the same cause.

XLVI. AND BE IT ENACTED, that in case any person convicted of any offence punishable upon summary conviction by virtue of this act, shall have paid the sum adjudged to be paid, together with costs under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or shall have been discharged from his conviction in the manner aforesaid, in every such case he shall be released from all further or other proceedings for the same cause.

Form of conviction.

XLVII. AND BE IT ENACTED, that the justice before whom any person shall be convicted of any offence against this act, may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall require; *videlicet*,

" Be it remembered, that on the day of
" in the year of our Lord at
" [*as the case may be*] *A. O.* is convicted before me *I. P.*,
" one of his Majesty's Justices of the Peace for ,
" for that he the said *A. O.* did [*specify the offence, and*
" *the time and place when and where the same was*
" *committed, as the case may be, and on a second con-*
" *viction state the first conviction,*] and I the said *I. P.*

" adjudge the said *A. O.* for the said offence to be impri-
" soned in the [*or* to be imprisoned in the
" and there kept to hard labour] for the
" space of ; [*or*, I adjudge the said *A. O.* for his said
" offence, to forfeit and pay [*here state the pe-
" nalty actually imposed, or state the penalty, and also
" the value of the articles stolen, or the amount of the
" injury, and as the case may be,*] and also to pay the
" sum of for costs; and in default of immediate
" payment of the said sums, to be imprisoned in the
" [*or* to be imprisoned in the and
" there kept to hard labour] for the space of unless
" the said sums shall be sooner paid; [*or*, and I order that
" the said sums shall be paid by the said *A. O.* on or be-
" fore the day of ;] and I direct that the said
" sum of [i. e. *the penalty only*] shall be paid
" to of aforesaid, in which the said offence
" was committed, to be by him applied according to
" the directions of the statute in that case made and pro-
" vided; [*or*, that the said sum of i. e. *the pe-
" nalty*, shall be paid to, *&c. as before*] and that the said
" sum of [i. e. *the value of the articles stolen, or
" the amount of the injury done,*] shall be paid to *C. D.*
" [*the party aggrieved, unless he has been examined in
" proof of the offence, in which case, state that fact,
" and dispose of the whole like the penalty, as before.*]
" Given under my hand and seal, the day and year first
" abovementioned."

XLVIII. AND BE IT ENACTED, that in all cases where the sum adjudged to be paid on any summary conviction shall exceed fifty sicca rupees, or the imprisonment adjudged shall exceed one calendar month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any such conviction may appeal to the next Court of General or Quarter Sessions, which shall be holden not less than twelve days after the day of such conviction; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before

Appeal to Court of Quarter Sessions.

such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties, before a Justice of the Peace, conditioned personally to appear at the said Sessions, and to try such appeal and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; and upon such notice being given and such recognizance being entered into, the justice before whom the same shall be entered into, shall liberate such person if in custody, and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment. (1)

No conviction, &c. to be quashed for want of form.

No certiorari, allowed.

No commitment void for defect.

Proviso.

XLIX. AND BE IT ENACTED, that no such conviction or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of his Majesty's superior Courts of Record; and no warrant of commitment shall be held void by reason of any defect therein; provided it be therein alleged, that the party has been convicted, and there be a good and valid conviction to sustain the same.

Convictions to be returned to the quarter sessions.

How far they shall be evidence in future cases.

L. AND BE IT ENACTED, that every Justice of the Peace, before whom any person shall be convicted of any offence against this act, shall transmit the conviction to the next Court of General or Quarter Sessions, there to be kept by the proper officer among the records of the Court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court or proved to be a true copy, shall be sufficient evidence to prove conviction for the former offence, and the conviction shall be

(1) See Mr. Justice Ryan's charge to the Grand Jury, April 1829, in Appendix.

presumed to have been unappealed against until the contrary be shown.

LI. AND BE IT ENACTED, that all actions and prosecutions to be commenced against any person for any thing done in pursuance of this act, shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this act and the special matter in evidence at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be, shall certify his approbation of the action.

Limit to actions under the Act.

Notice of action.

General issue, &c.

Tender of amends, or money paid into Court.

Costs.

Judges' certificate.

"LII. AND WHEREAS, doubts have arisen whether his "Majesty's Supreme Courts at *Calcutta*, *Madras*, and "*Bombay* respectively, or any Justice of the Peace in the "*British* territories under the Government of the said "United Company, may lawfully defray the costs of any "prosecution, or may make compensation to any prosecu-"tor, otherwise than out of any fine levied in the same pro-"secution;" Be it enacted, that each of the said Supreme Courts may apply towards the reasonable costs of prosecuting offences, or of compensating prosecutors, (whether the prosecution be before the said Court or any Justices of the Peace,) any part of the whole sum arising out of fines levied by or transmitted to the said Courts: Provided

How Supreme Court may apply fines.

always, that no such allowance for costs or compensation shall be made, except upon motion in open Court; and that nothing herein contained shall prevent Justices of the Peace from making such allowances for costs or compensation to prosecutors as they might before have lawfully done.

Petit treason to be treated as murder.

LIII. AND BE IT ENACTED, that every offence which before the commencement of this act would have amounted to petit treason shall be deemed to be murder only, and no greater offence; and all persons guilty in respect thereof, whether as principals or as accessories, shall be dealt with, indicted, tried, and punished as principals and accessories in murder.

Punishment of principal and accessory to murder.

LIV. AND BE IT ENACTED, that every person convicted of murder, or of being an accessory before the fact to murder, shall suffer death as a felon; and every accessory after the fact to murder shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life or for any term of years, or to be imprisoned for any term not exceeding four years.

Period of execution, and marks of infamy.

LV. AND BE IT ENACTED, that every person convicted of murder shall be executed according to law on the day next but one after that, on which the sentence shall be passed, unless the same shall happen to be *Sunday*, and in that case on the *Monday* following; and the body of every murderer shall, after execution, either be dissected or hung in chains, as to the Court shall seem meet; and sentence shall be pronounced immediately after the conviction of every murderer, unless the Court shall see reasonable cause for postponing the same; and such sentence shall express not only the usual judgment of death, but also the time hereby appointed for the execution thereof, and that the body of the offender shall be dissected or hung in chains, if the Court shall think fit: Provided always, that after such sentence shall have been pronounced, it shall be lawful for the Court or Judge to stay the execution thereof, if such Court or Judge shall so think fit.

Sentence to be pronounced immediately after conviction.

Power to respite.

Provision for the trial of murder and manslaughter, where

LVI. AND BE IT ENACTED, that where any person, being feloniously stricken, poisoned, or otherwise hurt at any place whatsoever, either upon the land or at sea,

within the limits of the charter of the said United Company, shall die of such stroke, poisoning, or hurt at any place without those limits, or being feloniously stricken, poisoned, or otherwise hurt at any place whatsoever, either upon land or at sea, shall die of such stroke, poisoning, or hurt at any place within the limits aforesaid, every offence committed in respect of any such case, whether the same shall amount to the offence of murder or of manslaughter, or of being accessory before or after the fact to murder or manslaughter, may be dealt with, inquired of, tried, determined, and punished by any of his Majesty's Courts of justice within the *British* territories under the Government of the said United Company, in the same manner in all respects as if such offence had been wholly committed within the jurisdiction of the Court, within the jurisdiction of which such offender shall be apprehended or be in custody.

the death or the cause of death only, happens within the limits of the East India Company's Charter.

LVII. AND BE IT ENACTED, that every person convicted of manslaughter shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term not less than seven years, or to be imprisoned for any term not exceeding four years, or to pay such fine as the Court shall award.

Punishment of manslaughter.

LVIII. PROVIDED ALWAYS, and be it enacted, that no punishment or forfeiture shall be incurred by any person who shall kill another by misfortune, or in his own defence, or in any manner without felony.

Excusable and justifiable homicide.

LIX. AND BE IT ENACTED, that if any person unlawfully and maliciously shall administer or attempt to administer to any person, or shall cause to be taken by any person any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate, or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to murder such person, every such offender

Attempting, by poison or violence, to murder, capital.

shall be guilty of felony, and being convicted thereof, shall suffer death as a felon. (1)

Shooting at or stabbing, cutting, or wounding any person, with intent to maim, &c. or to resist apprehension, capital.

LX. AND BE IT ENACTED, that if any person unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut, or wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of the party so offending, or of any of his accomplices, for any offence for which he or they may respectively be liable by law to be apprehended or detained, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon: (2) Provided always, that in case it shall appear, on the trial of any person indicted for any of the offences above specified, that such acts of shooting, or of attempting to discharge loaded arms, or of stabbing, cutting, or wounding as aforesaid, were committed under such circumstances that if death had ensued therefrom, the same would not, in law, have amounted to the crime of murder, in every such case the person so indicted, shall be acquitted of felony. (3)

Proviso.

Administering poison, or using any means to procure the miscarriage of any woman quick with child, capital.

LXI. AND BE IT ENACTED, that if any person, with intent to procure the miscarriage of any woman then being quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any poison or other noxious thing, or shall use any instrument or other means whatsoever with the like intent, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon; and if any person, with intent to

Using means with intent to

(1) This section is repealed by Act. 31, of 1838, § 1, *post*, and see provisions substituted by §§ 2, 3, and 4.

(2) This section is repealed by Act. 31, of 1838, *post*, and see provisions substituted by §§ 5 and 6.

(3) This proviso is altogether omitted in 1 Vic. c. 85, and in the corresponding Act 31, of 1838, *post*, although the insertion was recommended by the Criminal Law Commissioners.

procure the miscarriage of any woman not being, or not being proved to be, then quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any medicine or other thing, or shall use any instrument or other means whatever with the like intent, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding fourteen years nor less than seven years, or to be imprisoned for any term not exceeding three years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment. (1)

procure miscarriage, where the woman is not quick with child,

Punishment.

LXII. AND BE IT ENACTED, that if any woman shall be delivered of a child, and shall, by secret burying or otherwise disposing of the dead body of the said child, endeavour to conceal the birth thereof, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding two years; and it shall not be necessary to prove whether the child died before, at, or after its birth: Provided always, that if any woman tried for the murder of her child shall be acquitted thereof, it shall be lawful for the jury by whose verdict she shall be acquitted, to find, in case it shall so appear in evidence, that she was delivered of a child, and that she did, by secret burying or otherwise disposing of the dead body of such child, endeavour to conceal the birth thereof; and thereupon the Court may pass such sentence as if she had been convicted upon an indictment for the concealment of the birth.

A woman concealing the birth of her child.

Proviso.

Where indicted for murder, and acquitted, jury may find concealment.

Punishment.

LXIII. AND BE IT ENACTED, that every person convicted of the abominable crime of buggery, committed either with mankind or with any animal, shall suffer death as a felon.

Sodomy.

LXIV. AND BE IT ENACTED, that every person convicted of the crime of rape, shall suffer death as a felon.

Rape.

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(1) Repealed by Act 31, of 1838, *post*, and see provisions substituted by § 7.

Carnal knowledge of a girl under the age of eight, capital

above eight and under ten, misdemeanor.

LXV. AND BE IT ENACTED, that if any person shall unlawfully and carnally know and abuse any girl, under the age of eight years, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon; and if any person shall unlawfully and carnally know and abuse any girl, being above the age of eight years and under the age of ten years, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to be imprisoned for such term as the Court shall award.

What is sufficient to constitute rape, &c.

LXVI. "AND WHEREAS upon trials, for the crimes of "buggery and of rape, and of carnally abusing girls under "the respective ages hereinbefore mentioned, offenders fre-"quently escape by reason of the difficulty of the proof "which has been required of the completion of these several "crimes;" For remedy thereof Be it enacted, that it shall not be necessary, in any of those cases, to prove the actual emission of seed in order to constitute a carnal knowledge, but that the carnal knowledge, shall be deemed complete upon proof of penetration only.

Forcible abduction of any woman on account of her fortune with intent to marry her, &c.

LXVII. AND BE IT ENACTED, that where any woman shall have any interest, whether legal or equitable, present or future, absolute, conditional, or contingent, in any real or personal estate, or shall be an heiress presumptive or next of kin to any one having such interest, if any person shall, from motives of lucre, take away or detain such woman against her will, with intent to marry or defile her, or to cause her to be married or defiled by any other person, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be transported to such place as the Court shall direct, either for life or for any term not less than seven years, or to be imprisoned for any term not exceeding four years.

Unlawful abduction of any girl under 16 from her parents, &c.

LXVIII. AND BE IT ENACTED, that if any person shall unlawfully take or cause to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her, every such offender shall be guilty of a misdemeanor, and being

convicted thereof, shall be liable to suffer such punishment, by fine or imprisonment, or by both, as the Court shall award.

LXIX. AND BE IT ENACTED, that if any person shall maliciously, either by force or fraud, lead or take away, or decoy or entice away, or detain, any child under the age of ten years, with intent to deprive the parent or parents, or any other person having the lawful care or charge of such child, of the possession of such child, or with intent to steal any article upon or about the person of such child, to whomsoever such article may belong; or if any person shall, with any such intent as aforesaid, receive or harbour any such child, knowing the same to have been by force or fraud, led, taken, decoyed, enticed away, or detained as hereinbefore mentioned; every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be transported to such place as the Court shall direct, for the term of seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall think fit,) in addition to such imprisonment: Provided always, that no person who shall have claimed to be the father of an illegitimate child, or to have any right to the possession of such child, shall be liable to be prosecuted by virtue hereof, on account of his getting possession of such child or taking such child out of the possession of the mother, or any other person having the lawful charge thereof.

Stealing a child under the age of ten years,

or harbouring such child when stolen.

Not to extend to fathers taking their illegitimate children.

LXX. AND BE IT ENACTED, that if any person professing the Christian religion, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in the *East Indies* or elsewhere, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be transported to such place as the Court shall direct, for the term of seven years, or to be imprisoned for any term not exceeding two years; and every such offence may be dealt with, inquired of, tried, determined, and punished by any of his Majesty's Courts of justice within the *British* territories under the Government of the said

Bigamy.

Place of trial.

United Company, within the jurisdiction of which the offender shall be apprehended or be in custody, as if the offence had been actually committed within such jurisdiction: Provided always, that nothing herein contained shall extend to any second marriage contracted out of his Majesty's dominions by any other than a subject of his Majesty, or to any person marrying a second time, whose husband or wife shall have been continually absent from such person for the space of seven years then last past, and shall not have been known by such person to be living within that time, or shall extend to any person who, at the time of such second marriage, shall have been divorced from the bond of the first marriage, or to any person whose former marriage shall have been declared void by the sentence of any Court of competent jurisdiction.

Exceptions.

Master of a merchant vessel forcing a seaman on shore or leaving him behind, or refusing to bring him home, guilty of a misdemeanor.

LXXI. AND BE IT ENACTED, that if any master of a merchant vessel shall, during his being abroad, force any man on shore, or wilfully leave him behind in any of his Majesty's colonies or elsewhere, or shall refuse to bring home with him again all such of the men whom he carried out with him as are in a condition to return when he shall be ready to proceed on his homeward-bound voyage, every such master shall be guilty of a misdemeanor, and being lawfully convicted thereof, shall be imprisoned for such term as the Court shall award; and the said Court is hereby authorized to issue one or more commissions, if necessary, for the examination of witnesses abroad; and the depositions taken under the same shall be received in evidence, on the trial of every such indictment or information.

Forging or counterfeiting any deed, or instrument for transfer of property or stock, &c.

LXXII. AND BE IT ENACTED, that if any person shall falsely make, forge, counterfeit, or alter, or shall utter or publish as true, or sell, offer, or dispose of, or put away, knowing the same to be false, forged, counterfeited or altered, any deed, or any written instrument for the conveyance or transfer of any property or interest in any land, house, or goods, or any share or interest in any public stock or fund established by authority of Parliament, or of the said United Company, or of any foreign state, or in any stock or fund of any body corporate,

company, or society, or for securing the payment of money, or any will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, or any indorsement or assignment of any bill of exchange or promissory note for the payment of money, or any acceptance of any bill of exchange, or any acquittance or receipt for money, or any goods or valuable thing, or any accountable receipt of any note, bill or other security for payment of money, or any warrant or order for payment of money, or delivery or transfer of any goods or valuable thing, or any decree, order, record, certificate, minute, affidavit, deposition, or other writing, which shall be or purport to have been enrolled, drawn up, filed, entered, issued or delivered by any Court or magistrate in any proceeding, criminal or civil, with intention to defraud any person whatsoever, or any corporation, every such offender shall be guilty of felony, and being thereof convicted, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Will, bond, bill of exchange, &c.

Decree or record &c.

Punishment.

LXXIII. AND BE IT ENACTED, that if any person shall counterfeit any gold or silver coin of any of the territories under the Governments of the said United Company, in the *East Indies*, or any gold or silver coin usually current, and received as money in payment, in any part of the *British* territories under the Government of the said United Commpany, every such offender shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Counterfeiting current coin.

LXXIV. AND BE IT ENACTED, that if any person shall utter or tender in payment, or sell, or give in exchange, or pay or put off to any person any such false

Uttering counterfeit coin.

or counterfeited coin as aforesaid, knowing the same to be so false or counterfeited, every such offender, being thereof convicted, shall be adjudged by the Court to suffer six months imprisonment, and find sureties for his good behaviour for six months more, to be computed from the end of the said first six months; and if the same person shall afterwards be convicted a second time of the like offence of uttering or tendering in payment, or selling, or giving in exchange, or paying or putting off, any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit, such person shall for such second offence suffer two years' imprisonment, and find sureties for his or her good behaviour for two years more, to be computed from the end of the said first two years; and if the same person shall afterwards offend a third time, in uttering or tendering in payment, or selling, or giving in exchange, or paying or putting off any such false or counterfeit coin as aforesaid, knowing the same to be false or counterfeit; and shall be convicted of such third offence, he shall be sentenced to transportation for life to such place beyond the seas as the Court shall direct.

1st offence.

2d offence.

3d offence.

Having in possession more than five pieces of counterfeit coin without lawful excuse, punishable with fine or three months' imprisonment.

LXXV. AND BE IT ENACTED, that if any person shall have in his custody, without lawful excuse, the proof whereof shall lie on the party accused, any greater number of pieces than five pieces of such false or counterfeit coin as aforesaid, every such person, being thereof convicted upon the oath of one or more credible witness or witnesses before one of his Majesty's Justices of the Peace, or, if there shall be no Justice of the Peace duly qualified to act in the place where such offence shall be committed, before one of the Judges of his Majesty's Court there, shall forfeit and lose all such false and counterfeit coin, which shall be cut in pieces and destroyed by order of such justice or judge, and shall, for every offence, forfeit and pay any sum of money not exceeding in value forty sicca rupees, or less than twenty sicca rupees in the currency of the place in which such offence shall be committed, for every such piece of false or counterfeit coin which shall be found in the custody of such person, one moiety to the informer or informers, and the other moiety

to the poor of the presidency, settlement, or place in which such offence shall be committed; and in case any such penalty shall not be forthwith paid, it shall be lawful for such justice or judge to commit the person or persons, who shall be adjudged to pay the same to the common jail or house of correction, there to be kept to hard labour for the space of three calendar months, or until such penalty shall be paid.

Counterfeiting licences or certificates of ships or persons, or attested copies thereof, punishable with fine and imprisonment.

LXXVI. AND BE IT ENACTED, that if any person shall counterfeit, erase, alter, or falsify any licence authorizing any ship or vessel to proceed to any place in the *East Indies* or parts aforesaid, or any licence or certificate authorizing any person to go to or reside at any such place, or any attested copy of any such licence or certificate, or shall utter or publish as true any such counterfeited, erased, altered, or falsified licence, certificate, or attested copy, knowing the same to be counterfeited, erased, altered, or falsified, every such offender, being convicted thereof, shall suffer such imprisonment not exceeding one year, and shall pay such fine not exceeding in value one thousand sicca rupees in the currency of the place in which such offence shall be committed, as the Court shall direct.

Distinction between grand and petty larceny abolished.

LXXVII. AND BE IT ENACTED, that the distinction between grand larceny and petty larceny shall be abolished; and every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature, and shall be subject to the same incidents, in all respects, as grand larceny was before the day of this act taking effect.

Punishments for simple larceny.

LXXVIII. AND BE IT ENACTED, that every person convicted of simple larceny, or of any felony hereby made punishable liko simple larceny, shall, except in the cases hereinafter otherwise provided for, be liable at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice publicly or

privately whipped, if the Court shall so think fit, in addition to such imprisonment.

Stealing public or private securities for money, or warrants for goods, felony and punishable like stealing goods.

LXXIX. AND BE IT ENACTED, that if any person shall steal any security whatsoever, entitling or evidencing the title of any person, or body corporate, to any share or interest in any public stock or fund, whether established by authority of Parliament, or of the said United Company, or of any foreign state, or in any stock or fund of any body corporate, company, or society, or to any deposit in any savings' bank, or shall steal any debenture, deed, bond, bill, note, warrant, order or other security whatsoever, for money or for payment of money, whether of the territories under the Government of the said United Company or of any other of his Majesty's Dominions, or of any foreign country or state, or shall steal any warrant or order for the delivery or transfer of any goods or valuable thing, every such offender shall be deemed guilty of felony of the same nature and in the same degree, and punishable in the same manner, as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen, or secured thereby, and remaining unsatisfied, or with the value of the goods or other valuable thing mentioned in the warrant or order; and each of the several documents, hereinbefore enumerated, shall, throughout this act, be deemed for every purpose to be included under and denoted by the words "valuable security."

Rule of interpretation.

Robbery from the person, capital.

Stealing from the person,

Assault with intent to rob, and demands accompanied with menaces or force,

Punishment.

LXXX. AND BE IT ENACTED, that if any person shall rob, any other person of any chattel, money, or valuable security, every such offender, being convicted thereof, shall suffer death as a felon; and if any person shall steal any such property from the person of another, or shall assault any other person with intent to rob him, or shall with menaces or by force demand any such property of any other person with intent to steal the same, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for

life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment. (1)

Obtaining money, &c. by threatening to accuse a party of an infamous crime.

LXXXI. AND BE IT DECLARED AND ENACTED, that if any person shall accuse or threaten to accuse any other person of any infamous crime, as hereinafter defined, with a view or intent to extort or gain from him, and shall, by intimidating him by such accusation or threat, extort or gain from him any chattel, money, or valuable security, every such offender shall be deemed guilty of robbery, and shall be indicted and punished accordingly. (2)

Sending letters threatening to accuse a party of an infamous crime, for the purpose of extorting money, &c.

LXXXII. AND BE IT ENACTED, that if any person shall knowingly send or deliver any letter or writing, demanding of any person, with menaces, or without any reasonable or probable cause, any chattel, money, or valuable security; or if any person shall accuse or threaten to accuse, or shall knowingly send or deliver any letter or writing accusing or threatening to accuse, any person of any crime punishable by law with death, transportation, or pillory, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime, as hereinafter defined, with a view or intent to extort or gain from such person any chattel, money, or valuable security, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment. (3)

What shall be deemed an infamous crime.

LXXXIII. AND BE IT ENACTED, that the abominable crime of buggery, committed either with mankind

(1) Repealed by Act 31, of 1838, § 1, and see provisions substituted by §§ 13, 14, 17, 18, and 19.

(2) Repealed by Act 31, of 1838, § 1, and see provisions substituted by § 15.

(3) See section 19 of Act 31, of 1838.

or with any animal, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person, whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this act.

Burglary, capital.

LXXXIV. AND BE IT ENACTED, that every person convicted of burglary shall suffer death as a felon; (1) and it is hereby declared, that if any person shall enter the dwelling house of another with intent to commit felony, or being in such dwelling house shall commit any felony, and shall in either case break out of the said dwelling house in the night-time, such person shall be deemed guilty of burglary.

House-breaking and stealing in a house, when capital.

LXXXV. AND BE IT ENACTED, that if any person shall break and enter any dwelling house, and steal therein any chattel, money, or valuable security, to any value whatever, or shall steal any such property to any value whatever in any dwelling house, any person therein being put in fear, or shall steal in any dwelling house any chattel, money, or valuable security, to the value, in the whole of fifty sicca rupees or more, every such offender, being convicted thereof, shall suffer death as a felon. (2)

What buildings only are part of a house for capital purposes.

LXXXVI. PROVIDED ALWAYS, and be it enacted, that no building, although within the same curtilage with the dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for the purpose of burglary, or for any of the purposes aforesaid, unless there shall be a communication between such building and dwelling house, either immediate or by means of a covered and inclosed passage leading from the one to the other.

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(1) Section 1 of Act 31, of 1838, enacts that so much of this Statute as relates to any person, who shall be convicted of burglary shall cease to have effect for that of passing the Act—and see provisions substituted by §§ 9, 10, and 11.

(2) Repealed by Act 31, of 1838, § 1, and see provisions substituted by § 12.

LXXXVII. AND BE IT ENACTED, that if any person shall break and enter any building, and steal therein any chattel, money, or valuable security, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof according to the provision hereinbefore mentioned, every such offender, being convicted thereof, either upon an indictment for the same offence, or upon an indictment for burglary, house-breaking, or stealing, to the value of fifty sicca rupees in a dwelling house, containing a separate count for such offence, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped (if the Court shall so think fit,) in addition to such imprisonment.

Robbery in any building within the same curtilage as the house, but not privileged as part of the house.

LXXXVIII. AND BE IT ENACTED, that if any person shall break and enter any shop, ware-house, or counting-house, and steal therein any chattel, money, or valuable security, every such offender, being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

Robbery in a shop, ware-house, &c.

LXXXIX. AND BE IT ENACTED, that if any person shall steal any goods or merchandize in any vessel, barge, or boat of any description whatsoever, in any port of entry or discharge, or upon any navigable river or canal, or in any creek belonging to or communicating with any such port or canal; or shall steal any goods or merchandize from any dock, wharf, or quay, adjacent to any such port, river, canal, or creek, every such offender being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned.

Stealing goods from a vessel in a port, river, or canal, or from a dock, wharf, &c.

XC. AND BE IT ENACTED, that if any person shall plunder or steal any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize, or articles of any kind belonging to such ship or vessel, every such offender, being convicted

Plundering the tackle or cargo of a vessel in distress or wrecked, capital.

Proviso.

thereof, shall suffer death as a felon: (1) Provided always, that when articles of small value shall be stranded or cast on shore, and shall be stolen without circumstances of cruelty, outrage, or violence, it shall be lawful to prosecute and punish the offender as for simple larceny.

Persons in possession of ship-wrecked goods not giving a satisfactory account.

XCI. AND BE IT ENACTED, that if any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore as aforesaid, shall by virtue of a search warrant, to be granted as hereinafter mentioned, be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a Justice of the Peace, shall not satisfy the justice that he came lawfully by the same, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on the conviction of such offence before the justice, shall forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice shall seem meet.

Ship-wrecked goods offered for sale may be seized.

XCII. AND BE IT ENACTED, that if any person shall offer or expose for sale any goods, merchandize, or articles whatsoever, which shall have been unlawfully taken, or reasonably suspected so to have been, from any ship or vessel in distress or wrecked, stranded, or cast on shore as aforesaid, in every such case any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice to such seizure, to some Justice of the Peace; and if the person who shall have offered or exposed the same for sale, being duly summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandize, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to

(1) The former part of this section repealed by Act 31, of 1838, and see provisions substituted by § 16.

the person who seized the same; and the offender, on conviction of such offence by the justice, shall forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice shall seem meet.

Stealing, &c. of records and other proceedings of Courts of Justice, a misdemeanor.

XCIII. AND BE IT ENACTED, that if any person shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously obliterate, injure, or destroy, any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or any original document whatever, of or belonging to any Court of Record, or relating to any matter, civil or criminal, begun, depending or terminated in any such Court; or any bill, answer, interrogatory, deposition, affidavit, order, or decree, or any original document whatsoever, of or belonging to any Court of Equity or relating to any cause or matter begun, depending or terminated in any such Court; every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for any term not exceeding seven years, or to suffer such other punishment by fine or imprisonment, or by both as the Court shall award; and it shall not, in any indictment for such offence, be necessary to allege that the article in respect of which the offence is committed, is the property of any person, or that the same is of any value.

Stealing or destroying wills, a misdemeanor.

XCIV. AND BE IT ENACTED, that if any person shall, either during the life of the testator or testatrix, or after his or her death, steal, or for any fraudulent purpose destroy or conceal, any will, codicil or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned; and it shall not, in any indictment for such offence, be necessary to allege that such will, codicil, or other instrument, is the property of any person, or that the same is of any value.

Stealing of writings relating to any real estate, a misdemeanor.

XCV. AND BE IT ENACTED, that if any person shall steal any paper or parchment, written or printed, or partly written and partly printed, being evidence of the title or of any part of the title to any real estate, every such offender shall be deemed guilty of a misdemeanor, and being convicted thereof, shall be liable to any of the punishments which the Court may award as hereinbefore last mentioned; and in any indictment for such offence it shall be sufficient to allege the things stolen to be evidence of the title or of part of the title of the person, or of some one of the persons, having a present interest, whether legal or equitable, in the real estate to which the same relates, and to mention such real estate or some part thereof; and it shall not be necessary to allege the things stolen to be of any value.

Nothing herein as to wills and writings shall lessen any remedy at law or in equity, which the aggrieved party now has.

XCVI. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing in this act contained, relating to either of the misdemeanors aforesaid, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall, prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any such offence might, or would have had, if this act had not been passed; but, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of either of the misdemeanors aforesaid, by any evidence whatever, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity, in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved.

Stealing dogs, or beasts or birds, kept in confinement.

Punishable by a Justice of the Peace on summary conviction.

XCVII. AND BE IT ENACTED, that if any person shall steal any dog, or shall steal any beast or bird, ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender being convicted thereof before a Justice of the Peace, shall, for the first offence, forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding

two hundred sicca rupees, as to the justice shall seem meet; and if any person so convicted shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice shall think fit; and if such subsequent conviction shall take place before two justices, they may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction.

2nd offence.

Two Justices may punish by whipping.

XCVIII. AND BE IT ENACTED, that if any person shall steal, or rip, cut, or break with intent to steal, any glass or wood work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, respectively fixed in or to any building whatsoever, or any thing made of metal fixed in any land being private property, or for a fence to any dwelling house, garden, or area or in any square, street, or other place dedicated to public use or ornament, every such offender shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny; and in case of any such thing fixed in any square, street, or other like place, it shall not be necessary to allege the same to be the property of any person.

Stealing fixtures of any kind from buildings, and metal fixtures from grounds, felony.

XCIX. AND BE IT ENACTED, that if any clerk or servant shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master, every such offender, being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for any term not exceeding fourteen years, or to be imprisoned for any term not exceeding three years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Clerks and servants stealing from their masters, felony.

Punishment.

Addition of whipping.

C. AND BE IT ENACTED, that if any clerk or servant or any person employed for the purpose, or in the capacity of a clerk or servant, shall by virtue of such employment

Clerks and servants receiving any money, &c.

on their master's account, and embezzling it, felony.

receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and shall fraudulently embezzle the same or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security was not received into the possession of such master otherwise than by the actual possession of his clerk, servant, or other person so employed; and every such offender, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments, which the Court may award as hereinbefore last mentioned.

Distinct acts of embezzlement may be charged in the same indictment.

CI. AND BE IT ENACTED, that it shall be lawful to charge in one indictment, and proceed under the same against the offender for any number of distinct acts of embezzlement not exceeding three, which may have been committed by him against the same master within the space of twelve calendar months from the first to the last of such acts; and in every such indictment, except where the offence shall relate to any chattel, it shall be sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained, if the offender shall be proved to have embezzled any amount, although the particular species of coin or valuable security of which such amount was composed, shall not be proved, or if he shall be proved to have embezzled any piece of coin or valuable security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, and such part shall have been returned accordingly.

As to allegation and proof of the property embezzled.

Agents embezzling money entrusted to them for a special purpose;

CII. AND BE IT ENACTED, that if any money or security for the payment of money, shall be entrusted to any banker, merchant, broker, attorney, or other agent with any direction in writing to apply such money or any part thereof, or the proceeds or any part of the proceeds of such security, for any purpose specified in such direction, and he shall, in violation of good faith, and contrary to the

purpose so specified, in anywise convert to his own use or benefit such money, security, or proceeds, or any part thereof respectively, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place beyond the seas as the Court shall direct, for any term not exceeding fourteen years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; And if any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund established by authority of Parliament or of the said United Company, or of any foreign state, or in any stock or fund of any body corporate, company, or society, shall be entrusted to any banker, merchant, broker, attorney, or other agent, for safe custody or for any special purpose, without any authority to sell, negociate, transfer, or pledge, and he shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney, shall have been entrusted to him, sell, negociate, transfer, pledge, or in any manner convert to his own use or benefit, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate, or any part thereof, every such offender shall be guilty of a misdeameanor, and being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award as hereinbefore last mentioned.

a misdemeanor

Punishment.

Or goods or valuable securities or stock,

CIII. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing hereinbefore contained, relating to agents shall affect any trustee in or under any instrument whatever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent, from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security according to the tenor and effect thereof, in such manner as he might have

Not to affect trustees or mortgagees;

nor to restrain bankers, &c. from receiving money due on securities,

nor from disposing of securities on which they have a lien unless &c.

done, if this act had not been passed; nor from selling, transferring or otherwise disposing of any securities or effects in his possession, upon which he shall have any lien, claim, or demand entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand.

Factors pledging for their own use goods, or documents relating to goods, entrusted to them for the purpose of sale, a misdemeanor.

CIV. AND BE IT ENACTED, that if any factor or agent entrusted for the purpose of sale with any goods or merchandize, or entrusted with any bill of lading, ware-house-keeper's or wharfinger's certificate or warrant or order for delivery of goods or merchandize, shall, for his own benefit, and in violation of good faith, deposit or pledge any such goods or merchandize, or any of the said documents, as a security for any money or negotiable instrument borrowed or received by such factor or agent at or before the time of making such deposit or pledge, or intended to be thereafter borrowed or received, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for any term not exceeding fourteen years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award; but no such factor or agent shall be liable to any prosecution for depositing or pledging any such goods or merchandize, or any of the said documents, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such deposit or pledge was justly due and owing to such factor or agent from his principal, together with the amount of any bill or bills of exchange drawn by or on account of such principal and accepted by such factor or agent.

Not to extend to cases where the pledge does not exceed the amount of the lien.

Nothing herein as to agents, &c. to lessen any other remedy, which the aggrieved party has.

CV. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing in this act contained, nor any proceeding, conviction, or judgment to be had or taken thereupon against any banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall prevent, lessen, or impeach any remedy at law or in equity, which any party aggrieved by any

such offence might, or would have had, if this act had not been passed; But, nevertheless, the conviction of any such offender shall not be received in evidence in any action at law or suit in equity against him; And no banker, merchant, broker, factor, attorney, or other agent as aforesaid, shall be liable to be convicted by any evidence whatever, as an offender against this act, in respect of any act done by him, if he shall at any time previously to his being indicted for such offence have disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity, in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved.

But conviction not evidence in action.

Not to be convicted if previous disclosure made, on compulsory process of law or equity.

CVI. AND BE IT ENACTED, that if any person shall, by any false pretence, obtain from any other person any chattel, money, or valuable security, with intent to cheat or defraud any person of the same, every such offender shall be guilty of a misdemeanor, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding seven years, or to suffer such other punishment by fine or imprisonment, or by both, as the Court shall award: Provided always, that if upon the trial of any person indicted for a misdemeanor, it shall appear that he obtained the property in any manner amounting to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanor, if the offence be in any other respects substantially proved; and no person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

Obtaining money, &c. by false pretences, a misdemeanor.

No acquittal on the ground that the case proved amounts to larceny.

CVII. AND BE IT ENACTED, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, or obtaining whereof shall amount to a felony, either at common law or by virtue of this act, such person knowing the same to have been feloniously stolen, taken, or obtained, every such receiver shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact, or as for a substantive felony, whether in the latter case the principal felon shall or shall not have been previously

Where the original offence is felony, the receivers of stolen property may be tried, either as accessories after the fact, or as substantive felons.

convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding fourteen years, or to be imprisoned for any term not exceeding three years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment; Provided always, that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence.

Where the original offence is misdemeanor, receivers may be prosecuted for a misdemeanor, whether the principal be convicted or not.

CVIII. AND BE IT ENACTED, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, or converting whereof is made an indictable misdemeanor by this act, such person knowing the same to have been unlawfully stolen, taken, obtained, or converted, every such receiver shall be guilty of a misdemeanor, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanor shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver shall, on conviction, be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

All receivers may be tried where the principal is triable, or where the property is found in their possession, as well as where the receiving takes place.

CIX. AND BE IT ENACTED, that if any person shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, every such person, whether charged as an accessory, after the fact to the felony, or with a substantive felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished in any place in which he shall have, or shall have had any such property in his possession, or in any place in which the party guilty of the principal felony or misdemeanor may by law be tried, in the same manner as

such receiver may be dealt with, indicted, tried, and punished, for receiving such property in the place where he actually received the same.

CX. AND BE IT ENACTED, that if any person guilty of any felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence by the owner of the property, or by his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative: and the Court before whom any such person shall be so convicted, shall have power to award, from time to time, writs of restitution for the said property, or to order the restitution thereof in a summary manner: Provided always, that if it shall appear, before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate, liable to the payment thereof, or being a negotiable instrument, shall have been *bonâ fide* taken or received by transfer or delivery by some person or body corporate, for a just and valuable consideration, without any notice, or without any reasonable cause to suspect, that the same had by any felony or misdemeanor been stolen, taken, obtained, or converted as aforesaid, in such case the Court shall not award or order the restitution of such security.

The owner of stolen property prosecuting the thief or receiver to conviction, shall have restitution of his property.

Exception.

CXI. AND BE IT ENACTED, that if any person shall corruptly take any money or reward, directly or indirectly, under pretence or on account of helping any person to any chattel, money, valuable security, or other property whatsoever, which shall by any felony or misdemeanor have been stolen, taken, obtained, or converted as aforesaid, every such person so taking money or reward (unless he shall cause the offender guilty of the principal felony or misdemeanor to be apprehended and brought to trial for the same) shall be guilty of felony, and being convicted thereof, shall be liable at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice,

Taking a reward for helping to the recovery of stolen property, without bringing the offender to trial, felony.

Punishment.

or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Advertising a reward for the return of stolen property, and purporting a compromise of offence.

CXII. AND BE IT ENACTED, that if any perosn shall publicly advertise a reward for the return of any property whatsoever, which shall have been stolen or lost, and shall in such advertisement use any words purporting that no questions will be asked, or shall make use of any words in any public advertisement purporting that a reward will be given or paid for any property which shall have been stolen or lost, without seizing or making any inquiry after the person producing such property, or shall promise or offer in any such public advertisement to return to any pawnbroker or other person who may have bought or advanced money by way of loan upon any property stolen or lost, the money so paid or advanced, or any other sum of money or reward for the return of such property, or if any person shall print or publish any such advertisement, in any of the above cases, every such person shall forfeit the sum of five hundred sicca rupees for every such offence, to any person who will sue for the same by action of debt, to be recovered with full costs of suit.

Forfeiture 500 rupees to party suing.

Receivers punishable summarily where the stealers are.

CXIII. AND BE IT ENACTED, that where the stealing or taking of any property whatsoever, is by this act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a Justice of the Peace, be liable for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment, to which a person guilty of a first, second, or subsequent offence of stealing or taking such property, is by this act made liable.

Setting fire to any church house, or building, &c. capital.

CXIV. AND BE IT ENACTED, that if any person shall unlawfully and maliciously set fire to any church or chapel, or other public place of religious worship whatsoever, or shall unlawfully and maliciously set fire to any house, stable coach-house, out-house, ware-house, office, shop, mill, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof,

whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon. (1)

Destroying manufacture or machinery or breaking into any building with that intent.

CXV. AND BE IT ENACTED, that if any person shall unlawfully and maliciously destroy, or damage with intent to destroy, or to render useless, any goods or articles in any stage, process or progress of manufacture; or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any loom, frame, machine, engine, rack, tackle, or implement, whether fixed or moveable, prepared for or employed in manufacturing or preparing any such goods or articles; or shall by force enter into any house, shop, building, or place with intent to commit any of the offences aforesaid; every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Punishment.

Rioters demolishing, &c. any church, house or building or machinery, felony.

CXVI. AND BE IT ENACTED, that if any persons, riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force demolish, pull down, or destroy, or begin to demolish, pull down, or destroy, any church or chapel or other public place of religious worship whatsoever, or any house, stable, coach-house, out-house, ware-house, office, shop, mill, barn, or granary, or any building or erection used in carrying on any trade or manufacture, or any branch thereof, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture or in any branch thereof, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon.

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(1) Repealed by Act 31, of 1838, § 1, and see provisions substituted by §§ 20 and 21

Setting fire to or destroying any ship,

CXVII. AND BE IT ENACTED, that if any person shall unlawfully and maliciously set fire to or in anywise destroy any ship or vessel, whether the same be complete or in an unfinished state, or shall unlawfully and malicously set fire to, cast away, or in anywise destroy any ship or vessel, or shall unlawfully and maliciously set fire to any goods, being on board any ship or vessel as cargo, with intent to burn or destroy such cargo or ship, and with intent thereby to prejudice any owner or part-owner of such ship or vessel, or any owner or part-owner of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same, every such offender shall be guilty of felony, and being convicted thereof, shall suffer death as a felon. (1)

or cargo with intent to prejudice owners &c. capital.

Damaging any ship otherwise than by fire, felony.

Punisment.

CXVIII. AND BE IT ENACTED, that if any person shall unlawfully and maliciously damage, otherwise than by fire, any ship or vessel, whether complete or in an unfinished state, with intent to destroy the same, or to render the same useless, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Doing any act tending to the immediate loss of a ship in distress, or destroying goods or any part of such ship.

CXIX. AND BE IT ENACTED, that if any person shall exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, or destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore or any goods, merchandize, or articles of any kind belonging to such ship or

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(1) Repealed by Act 31, of 1838, and see provisions substituted by §§ 22, 24 and 26.

vessel, or shall by force prevent or impede any person endeavouring to save his life from such ship or vessel, (whether he shall be on board or shall have quitted the same,) every such offender shall be guity of felony, and being convicted thereof, shall suffer death as a felon. (1)

Destroying any sea bank, or the bank of any river or canal, or any lock, floodgate, &c. felony.

CXX. And be it enacted, that if any person shall unlawfully and maliciously break down or cut down any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, whereby any land shall be overflowed or damaged, or shall be in danger of being so, or shall unlawfully and maliciously throw down, level, or otherwise destroy any lock, sluice, floodgate, or other work on any navigable river or canal, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment; and if any person shall unlawfully and maliciously cut off, draw up, or remove any piles, chalk, or other materials fixed in the ground, and used for securing any sea bank or sea wall, or the bank or wall of any river, canal, or marsh, or shall unlawfully and maliciously open or draw up any floodgate, or do any other injury or mischief to any navigable river or canal, with intent and so as thereby to obstruct or prevent the carrying on, completing, or maintaining the navigation thereof, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding seven years or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Cutting, or removing the piles, &c. of any sea bank, or bank of a river or canal, or doing any damage with intent to obstruct any such navigation, felony.

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(1) Repealed by Act 31, of 1838, § 1, and such provisions substituted by §§ 23 and 25.

Breaking down the dam of a fishery, punishable on summary conviction.

CXXI. AND BE IT ENACTED, that if any person shall unlawfully and maliciously break down or otherwise destroy the dam of any fish-pond, or of any water which shall be private property, or in which there shall be any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish, or shall unlawfully and maliciously put any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein, every such offender, being convicted thereof before a Justice of the Peace, shall forfeit and pay, over and above the amount of the injury done, such sum of money, not exceeding fifty sicca rupees, as to the justice shall seem meet.

Killing or maiming cattle, felony.

CXXII. AND BE IT ENACTED, that if any person shall unlawfully and maliciously kill, main, or wound any cattle or beast of burthen, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for life, or for any term of years, or to be imprisoned for any term not exceeding four years, and if a male, to be once, twice, or thrice, publicly or privately whipped, (if the Court shall so think fit,) in addition to such imprisonment.

Setting fire to crops or stacks of corn, grain, &c. or to any plantation, &c. felony.

CXXIII. AND BE IT ENACTED, that if any person shall unlawfully and maliciously set fire to any stock of rice, corn, or other grain, pulse, sugar-cane, straw, hay, or wood, or to any crop of rice, corn, or other grain, or pulse or sugar-cane, whether standing or cut down, or to any part of a wood, coppice, or plantation of trees, or valuable plants, or to any grass, fern, or other like ground produce, wheresoever the same may be growing, every such offender shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place, as the Court shall direct for any term not exceeding seven years, or to be imprisoned for any term not exceeding two years, and if a male, to be once, twice, or thrice, publicly or privately whipped,

(if the Court shall so think fit,) in addition to such imprisonment. (1)

CXXIV. AND BE IT ENACTED, that every punishment and forfeiture by this act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, shall equally apply and be enforced, whether the offence shall be committed, from malice conceived against the owner of the property in respect of which it shall be committed, or otherwise.

Malice against the owner of the property not essential to the offence.

CXXV. AND BE IT ENACTED, that all acts and parts of acts which by an act passed in the seventh and eighth years of the reign of his present Majesty, intituled "*An Act for repealing various Statutes in* England *relative to benefit of clergy, and to larceny and other offences connected therewith, and to malicious injuries to property, and to remedies against the hundred;*" or by an act passed in the present Session of Parliament, intituled "*An Act for consolidating and amending the statutes in* England *relative to offences against the person;*" are, as to that part of the United Kingdom called *England,* and as to offences committed within the jurisdiction of the Admiralty of *England,* repealed, except as therein mentioned, shall, from and after the said first day of *March,* one thousand eight hundred and twenty-nine, as to all persons, matters and things, over whom or which the jurisdiction of any of his Majesty's Courts of Justice erected with the *British* dominions under the Government of the said United Company extends, be repealed, except so far as any of the said acts may repeal the whole or any part of any other acts, and except as to offences and other matters committed or done before or upon the day of this act taking effect, which shall be dealt with and punished as if this act had not been passed.

All acts, &c. repealed by 7 & 8 G. 4 c. 27 & 9 G. 4 c. 31, as to England shall be repealed in like manner within the jurisdiction of King's Courts of Justice in India.

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(1) Repealed by Act 31, of 1838, § 1, and see provisions substituted by §§ 28 and 29.

Repeals part of 39 & 40 G. 3 c. 79.

CXXVI. AND BE IT ENACTED, that so much of an act passed in the thirty-ninth and fortieth years of the reign of his late Majesty, King *George* the Third, intituled "*An Act for establishing further regulations for the Government of the* British *territories in* India, *and the better administration of justice within the same,*" as relates to the transportation of offenders; and so much of an act passed in the fifty-third year of the same reign, intituled "*An Act for continuing in the* East India *Company for a further term the possession of the* British *territories in* India *together with certain exclusive privileges; for establishing further regulations for the Government of the said territories and the better administration of justice within the same; and for regulating the trade to and from the places within the limits of the said Company's Charter,*" as relates to the stealing or taking by robbery of securities for payment of money, to the falsely making, forging, counterfeiting, or altering, or to uttering, publishing, selling, offering, disposing of or putting away, knowing the same to be false, forged, or counterfeited, any writings, licences, certificates, or attested copies thereof, or to counterfeiting coin, or to uttering, tendering in payment, selling, giving in exchange, paying, putting off, or having in possession, forged or counterfeit coin; and so much of an act passed in the fourth year of the reign of his present Majesty, intituled "*An Act to consolidate and amend the laws for punishing mutiny and desertion of officers and soldiers in the service of the* East India *Company, and to authorize soldiers and sailors in the* East Indies *to send and receive letters at a reduced rate of postage,*" as requires that the oaths to be taken by members of General or other Courts-Martial, or Courts of Requests, composed of military officers, shall be taken upon the Holy Evangelists; shall, from and after the day of this act taking effect, in like manner and with the like exceptions, be and the same is hereby repealed.

And of 53 G. 3 c. 155.

And of 4 G. 4, c. 81.

All persons employed by his

CXXVII. AND BE IT ENACTED, that all persons whether *British* subjects or others, employed by or in the

service of his Majesty, shall be held subject and amenable to the criminal jurisdiction of his Majesty's Courts of Justice, erected or to be erected within the *British* territories under the Government of the said *India* Company, for all crimes and offences to be by them committed on or from and after the first day of *March*, one thousand eight hundred and twenty-nine, in the same manner as persons employed by or in the service of the said United Company, are now by law subject and amenable to the said jurisdiction. (1)

Majesty shall be amenable to King's Courts in India, as persons employed by the Company are.

(1) See Charter § 19.—26 G. 3. c. 57. § 29 and 33. G. 3, c. 52, § 67.

« *An* Act *to enable Courts of Law to order the Exami-*
« *nation of Witnesses upon Interrogatories and*
« *otherwise.*

[30*th March*, 1831.]

WHEREAS great difficulties and delays are often experienced, and sometimes a failure of justice takes place, in actions depending in courts of law, by reason of the *want of a competent power and authority in the said courts to order and enforce the examination of witnesses,* when the same may be required, before the trial of a cause: And whereas, by an act passed in the thirteenth year of the reign of his late Majesty King George the Third, intituled "An act for the establishing certain regulations for "the better management of the affairs of the East India "Company, as well in India as in Europe," certain powers are given and provisions made for the examination of witnesses in India in the cases therein mentioned: and it is expedient to extend such power and provisions; Be it therefore enacted, that all and every the powers, authorities, provisions, and matters contained in the said recited act, relating to the examination of witnesses in India, shall be, and the same are hereby extended to all colonies, islands, plantations, and places under the dominion of his Majesty in foreign parts, and to the judges of the several courts therein, and to all actions depending in any of his Msjesty's courts of law at Westminster, in what place or country (1)

13 G. 3, c. 63.

Powers of the recited act, as to the examination of witnesses in India, extended to the colonies, &c., and to all actions in the courts at Westminster when examination by commission shall appear necessary.

(1) The Statute 13 G. 3, c. 63, § 44, is confined to cases in which the cause of action arose in India. See Stat, *ante* p. 57.—and see Francisco *v.* Gilmore, 1 B. and P. 177.

soever the cause of action may have arisen, and whether the same may have arisen within the jurisdiction of the court to the judges whereof the writ or commission may be directed, or elsewhere, when it shall appear that the examination of witnesses under a writ or commission issued in pursuance of the authority hereby given, will be necessary or conducive to the due administration of justice, in the matter wherein such writ shall be applied for.

Judges to whom the commission is directed empowered to enforce the attendance of witnesses.

II. AND BE IT FURTHER ENACTED, When any writ or commission shall issue under the authority of the said recited act, or of the power hereinbefore given by this act, the judge or judges to whom the same shall be directed, shall have the like power to compel and enforce the attendance and examination of witnesses, as the court whereof they are judges, does or may possess for that purpose in suits or causes depending in such court.

Costs of writs and commission to be in the discretion of the court.

III. AND BE IT FURTHER ENACTED, that the costs of every writ or commission to be issued under the authority of the said recited act, or of the power hereinbefore given by this act, in any action at law depending in either of the said courts at Westminster, and of the proceedings thereon, shall be in the discretion of the court issuing the same. (1)

Secs. IV. V. VIII. IX. and XI. relate to the powers given to the Courts at Westminster, Lancaster and Durham, to order the examination of witnesses within their jurisdiction by an officer of the Court; or to order a commission for that purpose out of their jurisdiction. (2)

The present Statute extends to suits wherever the cause of action may have arisen. See the act *supra*. Doe *v.* Pattison, 3 Dowl. 35.—Bain *v.* De Vetry 3, Dowl. 516. The Courts of Exchequer and Common Pleas may issue a mandamus under the Statutes, Savage *v.* Binny, 2, Dowl. 643.

(1) As to costs under former act. See cases cited. 1 Dowl. 220, note.

(2) Under these Sections, a commission may be issued for the examination of witnesses abroad. Duckett Bart. *v.* Williams, 1 Dowl. 291.

Prisoners may be removed by *habeas corpus* for examination.

VI. AND BE IT FURTHER ENACTED, that it shall be lawful for any sheriff, gaoler, or other officer, having the custody of any prisoner, to take such prisoner for examination under the authority of this act, by virtue of a writ of *habeas corpus*, to be issued for that purpose, which writ shall and may be issued by any court or judge, under such circumstances and in such manner as such court or judge may now by law issue the writ, commonly called a writ of *habeas corpus ad testificandum*.

Examinations of witness to be taken upon oath or affirmation.

VII. AND BE IT FURTHER ENACTED, that it shall be lawful for all and every person authorized to take the examination of witnesses by any rule, order, writ, or commission, made or issued in pursuance of this act, and he and they are hereby authorized and required to take all such examinations upon the oath of the witnesses, or affirmation, in cases where affirmation is allowed by law instead of oath, to be administered by the person so authorized, or by any judge of the court wherein the action shall be depending; and if, upon such oath or affirmation, any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall and may be indicted and prosecuted for such offence in the county wherein such evidence shall be given, or in the county of Middlesex, if the evidence be given out of England.

Persons giving false evidence to be deemed guilty of perjury.

Venue.

Restrictions as to the reading of examinations or depositions without consent of the party.

X. AND BE IT FURTHER ENACTED, that no examination or deposition to be taken by virtue of this act, shall be read in evidence at any trial, without the consent of the party against whom the same may be offered, unless it shall appear to the satisfaction of the judge that the examinant or deponent is beyond the jurisdiction of the court, or dead, or unable, from permanent sickness, or other permanent infirmity, to attend the trial; in all or any of which cases, the examinations and depositions certified under the hand of the Commissioners, Master, Prothonotary, or other person taking the same, shall and may, without proof of the

signature to such certificate, be received and read in evidence, saving all just exceptions. (1)

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(1) The commission will be issued on the application of a defendant in a civil suit, as well as a plaintiff. Grillard *v.* Hogue, 1 Br. & B. 519.

Where the commission is obtained by the defendant, the plaintiff will be entitled to take copies of the depositions at his own expence, Davidson *v.* Nicol, 1 Dowl. 220.

The rule for a *mandamus* under the Statutes should be *nisi* in the first instance. Doe *v.* Pattison, 3 Dowl. 35.

Proceedings were had in this Court during the Vacation after the 3d Term 1839, under a *mandamus* issued in the case of Samuel *v.* Rawson and another pending in the Common Pleas.

The following is the form of the *mandamus*.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To the Chief Justice and other Judges of our Supreme Court of Judicature at Calcutta, Greeting. Whereas a certain suit is now depending in our Court before our Justices, between Thomas Samuel, plaintiff, and Thomas Samuel Rawson and William Norton, defandants, in an action on promises, and it hath been ruled and ordered by Us, that this writ shall be issued commanding you to hold a Court for the examination of witnesses on the part of the said defendants, and for receiving other proofs therein, pursuant to certain Statutes made and passed in the thirteenth year of the reign of King George the Third, and in the first year of King William the Fourth, and to perform all such matters and things, as by the said Statutes are required, and that this writ and the depositions taken in manner aforesaid, shall be transmitted under the seal of our said Supreme Court, to the Masters of this Court, and that the same be read and given in evidence on the trial of this cause saving all just exceptions. Now know ye, that We being willing, that such rule or order shall have due effect, Do command, that with all due diligence you hold a Court for the examination on oath, of the said witnesses on the part of the said defendants, in the action aforesaid, and for receiving other proofs herein pursuant to the said Statutes, and that you perform all such other matters and things as by the said Statutes or by either of them, you are required to do and perform, and that you forthwith transmit the examinations which you shall have taken by virtue of this writ, together with this writ, under the seal of our said Supreme Court, to the Masters of this Court, at their Office in Chancery Lane, London. Witness Sir Nicolas Conyngham Tindal, Knight, at Westminster, this third day of April, in the second year of our reign.

In this case the Plaint consisted of three Counts, on an agreement for the consignment of Goods to India for sale by defendant's agents on plaintiff's account, to which 62 pleas were put in, some of which were replied to, and to others demurrers filed. The issue roll will be found at length.

STAT. 2 WILL. 4. CAP. 43.

9. G. 4 c. 73.

"*An* Act *to continue until the first day of March, one* "*thousand eight hundred and thirty-six, an Act* "*of the ninth year of his late Majesty, for the Relief* "*of* Insolvent Debtors *in India.*"

[1*st June* 1832]

STAT. 2 WILL. 4. CAP. 51.

"*An* Act *to regulate the practice and the Fees in the* "Vice-Admiralty Courts *abroad, and to obviate doubts* "*as to their jurisdiction.*"

[23*d June* 1232.]

"WHEREAS it is expedient, that provision should be "made for the regulation of the practice, to be observed "in the suits and proceedings in the Courts of Vice-Admi- "ralty in his Majesty's possessions abroad, and for the "establishment of fees to be allowed and taken in the said "Courts, by the respective judges, officers, and practition- "ers, therein:" Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of

the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that it shall be lawful for his Majesty, with the advice of his Privy Council, from time to time, to make and ordain such rules and regulations as shall be deemed expedient, touching the practice to be observed in suits and proceedings in several Courts of Vice-Admiralty at present or hereafter to be established in any of his Majesty's possessions abroad, and likewise from time to time to make, ordain, and establish tables of fees, to be taken or received by the judges, officers, and practitioners in the said Courts, for all acts to be done therein, and also from time to time, as shall be found expedient, to alter any such rules, regulations, and fees, and to make any new regulations and table or tables of fees; and that, all such rules, regulations, and fees, after the same shall have been so made and established, or altered, from time to time, be entered or enrolled in the public books or records of the said Courts, so far as such practice and fees shall relate or apply to each of such Courts respectively.

His Majesty empowered to make regulations and establish fees in the Vice Admiralty Courts abroad.

Regulations and fees to be enrolled in the respective Courts.

II. AND BE IT FURTHER ENACTED, that a copy of every table of fees so to be from time to time made and established or altered, shall be laid before the House of Commons, within three calendar months next, after the making, and establishment or alteration thereof respectively, if Parliament shall be then sitting, and if not, then within one calendar month next after the subsequent meeting of Parliament.

The table of fees to be laid before the House of Commons.

III. AND BE IT FURTHER ENACTED, that the several fees so to be established, and no other, shall from and after the making and establishment thereof, and the entry and enrolment thereof as aforesaid, be deemed and taken to be the lawful fees of the several judges, officers, ministers, and practitioners of the said respective Courts, and such fees only shall and may be demanded, received and taken, accordingly.

Fees so established to be the only lawful fees.

IV. AND to the intent, that all such regulations and fees may be promulgated and publicly made known, Be it further enacted, that the judge and registrar of every such

Copies of the regulations and tables of fees to

be hung up in each Court.

Court, shall cause to be kept constantly hung up and preserved in some conspicuous part of every such Court, and in the office of the registrar, a copy of the table of fees so to be from time to time ordained and established in such Courts respectively, so that the said table may be seen and read by all persons having any business in any such Court and office respectively; and that the books or records containing the entries of the said regulations and tables of fees, as the same shall be in force, shall be at all seasonable times open to the inspection of the practitioners and suitors in every such Court.

Appeal to the High Court of Admiralty in cases of costs.

V. AND BE IT FURTHER ENACTED, that in all cases in which proceedings may be had in any of the said Vice-Admiralty Courts, if any person shall feel himself aggrieved by the charges made by any of the officers or practitioners therein, and the allowance thereof by such Vice-Admiralty Court, by reason that such charges are not warranted by the tables hereinbefore mentioned, it shall be lawful for such person or his agent, under the regulations to be established in pursuance of the powers given by this act, by summary application to the High Court of Admiralty, to have the said charges taxed by the authority thereof.

Vice Admiralty Courts to have jurisdiction in certain maritime causes.

VI. "AND WHEREAS, in certain cases doubts may "arise as to the jurisdiction of Vice-Admiralty Courts in "his Majesty's possessions abroad, with respect to suits "for seamen's wages, pilotage, bottomry, damage to a "ship by collision, contempt in breach of the regulations "and instructions relating to his Majesty's service at sea, "salvage, and droits of admiralty;" Be it therefore enacted, that in all cases where a ship or vessel, or the master thereof, shall come within the local limits of any Vice-Admiralty Court, it shall be lawful for any person to commence proceedings in any of the suits hereinbefore mentioned in such Vice-Admiralty Court, notwithstanding the cause of action may have arisen out of the local limits of such Court, and to carry on the same in the same manner as if the cause of action had arisen within the said limits.

"*An* Act *to amend the law relating to the appointment* "*of* Justices of the Peace, *and of* Juries *in the* East "Indies."

[16*th August* 1832.]

"WHEREAS, it is expedient, that other persons be- "sides the covenanted servants of the United Company of "Merchants of *England*, trading to the *East Indies*, or "other *Britsh* inhabitants of the *East Indies*, should be "capable of being appointed to the office of Justice of the "Peace within and for the towns of *Calcutta*, *Madras* and "*Bombay*;" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in the manner prescribed by law for the nomination and appointment of persons now eligible to the office of Justice of the Peace, in the territories, in the possession and under the Government of the said Company, and subject, except as to the taking of any oaths to the other provisions of the law which relate to the said office, it shall and may be lawful for the Governor-General in Council of Fort William in *Bengal*, the Governor in Council of *Fort Saint George*, and the Governor in Council of *Bombay* respectively, for the time being, to nominate and appoint, in the name of the King's Majesty, his heirs, and successors, any persons resident within the territories aforesaid, and not being the subjects of any foreign state, whom the said Governor-General in Council, and Governors in Council respectively shall think properly qualified, and who will bind themselves by such oaths or solemn affirmations as may, from time to time, be prescribed in that

Governors in Council empowered to authorize any persons not being the subjects of any foreign state, to act as Justices of the Peace.

behalf by the said Governor-General in Council, and Governors in Council respectively, to act within and for the towns of *Calcutta, Madras,* and *Bombay* respectively, as Justices of the Peace; and the persons so to be nominated and appointed, to act as Justices of the Peace, within and for the towns aforesaid, shall have full power and authority to act as such Justices of the Peace, but according only to the tenor of the respective commissions wherein such persons shall be so nominated and appointed.

7 G. 4, c. 37. § 3, repealed as to limitation of Jurors to Christians.

II. AND WHEREAS, by an act passed in the seventh year of the reign of his late Majesty, King *George* the Fourth intituled "*An Act to regulate the appointment of Juries, in the East Indies,*" it is amongst other things provided and enacted, that the grand juries in all cases, and all juries for the trial of persons professing the Christian religion, shall consist wholly of persons professing the Christain religion; and, whereas, it is expedient to repeal such enactment; Be it therefore enacted, that from and after the first day of *July,* one thousand eight hundred and thirty-two, the said recited provision and enactment shall be, and the same is hereby repealed.

Parl Hy

"*An* Act *for effecting an arrangement with the* East "India *Company, and for the better Government of* "His Majesty's Indian *territories, till the thirtieth* "*day of April, one thousand eight hundred and fifty* "*four.*

[28*th August* 1833.]

"WHEREAS, by an act passed in the fifty-third year of "the reign of his Majesty, King *George* the Third, "intituled, *An Act for continuing in the* East India *Com-* "*pany, for a further term the possession of the* British "*territories in* India, *together with certain exclusive* "*privileges, for establishing further regulations for* "*the Government of the said territories, and the better* "*administration of justice within the same; and for* "*regulating the trade to and from the places within* "*the limits of the said Company's Charter,* the posses- "sion and Government of the *British* territories in *India* "were continued in the United Company of Merchants of "*England,* trading to the *East Indies,* for a term therein "mentioned;" "And, whereas, the said Company are "entitled to or claim the Lordships and islands of *St.* "*Helena* and *Bombay,* under grants from the Crown, and "other property to a large amount in value, and also cer- "tain rights and privileges not affected by the determination "of the term granted by the said recited act; And where- "as, the said Company have consented that all their rights "and interests to or in the said territories, and all their "territorial and commercial, real, and personal assets and "property whatsoever, shall, subject to the debts and "liabilities now affecting the same, be placed at the dispo- "sal of Parliament, in consideration of certain provisions

Recites 53. G. 3, c 155.

"hereinafter mentioned, and have also consented that their "right to trade for their own profit in common with other of "his Majesty's subjects, be suspended during such time as "the Government of the said territories shall be confided to "them; And whereas, it is expedient, that the said territo-"ries now under the Government of the said Company, be "continued under such Government, but in trust for the "Crown of the United Kingdom of *Great Britain* and "*Ireland*, and discharged of all claims of the said Com-"pany to any profit therefrom to their own use, except "the dividend hereinafter secured to them, and that the "property of the said Company be continued in their pos-"sesssion and at their disposal, in trust for the Crown, for "the service of the said Government, and other purposes "in this act mentioned;" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the twenty-second day of April, one thousand eight hundred and thirty-four, the territorial acquisitions and revenues mentioned or referred to in the said act of the fifty-third year of his late Majesty, King *George* the Third, together with the port and island of *Bombay* and all other territories now in the possession and under the Government of the said Company, except the Island of St. *Helena*, shall remain and continue under such Government until the thirtieth day of April, one thousand eight hundred and fifty-four; and that all the lands, and hereditaments, revenues, rents, and profits of the Company, and all the stores, merchandize, chattels, monies, debts, and real and personal estate whatsoever, except the said island of *St. Helena*, and the stores and property thereon, hereinafter mentioned, subject to the debts and liabilities now affecting the same respectively, and the benefit of all contracts, convenants, and engagements and all rights to fines, penalties, and forfeitures, and other emoluments whatsoever, which the said Company shall be seized or possessed of or entitled unto on the said twenty-second day of April, one thousand eight hundred and thirty-four, shall remain and be vested in and be held, received, and exercised respectively according

The British territories in India to remain under the Government of the Company till 30th April 1854.

Real and personal property of the Company to be held in trust for the Crown for the service of the Governmnt of India.

to the nature and quality, estate and interest of, and in the same respectively, by the said Company, in trust for his Majesty, his heirs, and successors, for the service of the Government of *India*, discharged of all claims of the said Company, to any profit or advantage therefrom to their own use, except the dividend on their capital stock, secured to them as hereinafter is mentioned, subject to such powers and authorities for the superintendence, direction, and control over the acts, operations, and concerns of the said Company as have been already made or provided by an act or acts of Parliament in that behalf, or are made or provided by this act.

II. AND BE IT ENACTED, that all and singular the privileges, franchises, abilities, capacities, powers, authorities, whether military or civil, rights, remedies, methods of suit, penalties, forfeitures, disabilities, provisions, matters, and things whatsoever, granted to or continued in the said United Company, by the said act of the fifty-third year of King *George* the Third, for and during the term limited by the said act, and all other the enactments, provisions, matters and things, contained in the said act, or in any other act, or acts whatsoever, which are limited or may be construed to be limited to continue for and during the term granted to the said Company, by the said act of the fifty-third year of King *George* the Third, so far as the same or any of them are in force, and not repealed by or repugnant to the enactments hereinafter contained, and all powers of alienation and disposition, rights, franchises, and immunities, which the said United Company now have, shall continue, and be in force, and may be exercised and enjoyed, as against all persons whomsoever, subject to the superintendence, direction, and control hereinbefore mentioned, until the thirtieth day of April, one thousand eight hundred and fifty-four.

All privileges, powers, &c. granted by 53 G. 3 c. 155, during the term limited by the said act.

So far as not repeated by o repugnant to the enactments contained in this act,

as also all rights and immunities of the Company, to be in force until 30th April 1854, not subject to control.

III. PROVIDED ALWAYS, AND BE IT ENACTED, that from and after the said twenty-second day of April, one thousand eight hundred and thirty-four, the exclusive right of trading with the dominions of the Emperor of *China*, and of trading in tea, continued to the said Company by

From 22d April 1834, China and tea trade of Company to cease.

the said act of the fifty-third year of King *George* the Third, shall cease.

Company to close their commercial business, and to sell their property not retained for Government.

IV. AND BE IT ENACTED, that the said Company shall, with all convenient speed after the said twenty-second day of April, one thousand eight hundred and thirty-four, close their commercial business, and make sale of all their merchandize, stores, and effects at home and abroad, distinguished in their account-books as commercial assests, and all their ware-houses, lands, tenements, hereditaments and property whatsoever, which may not be retained for the purposes of the Government of the said territories, and get in all debts due to them on account of the commercial branch of their affairs, and reduce their commercial establishments as the same shall become unnecessary, and discontinue and abstain from all commercial business which shall not be incident to the closing of their actual concerns, and to the conversion into money of the property hereinbefore directed to be sold, or which shall not be carried on for the purposes of the said Government.

Company not prevented selling goods, the property of others.

V. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing herein contained shall prevent the said Company from selling at the sales of their own goods and merchandize, by this act directed or authorized to be made, such goods and merchandize, the property of other persons as they may now lawfully sell at their public sales.

Board of Control to superintend the sale of the property, the reduction of the commercial establishments, payment of the commercial claims, &c.

VI. AND BE IT ENACTED, that the Board of Commissioners for the affairs of *India*, shall have full power to superintend, direct, and control the sale of the said merchandize, stores and effects and other property hereinbefore directed to be sold, and to determine from time to time, until the said property shall be converted into money, what parts of the said commercial establishment shall be continued and reduced respectively, and to control the allowance and payment of all claims upon the said Company, connected with the commercial branch of their affairs, and generally to superintend and control all acts and operations whatsoever of the said Company, whereby the value of the property of the said Company may be affected; and the said Board shall and may appoint such

officers as shall be necessary to attend upon the said Board during the winding up of the commercial business of the said Company; and that the charge of such salaries or allowance as his Majesty shall, by any warrant or warrants, under his sign manual, countersigned by the Chancellor of the Exchequer for the time being, direct to be paid to such officers, shall be defrayed by the said Company, as hereinafter mentioned, in addition to the ordinary charges of the said Board.

Board to appoint officers to attend them during the winding-up of the commercial business.

VII. AND BE IT ENACTED, that it shall be lawful for the said Company to take into consideration the claims of any persons now or heretofore employed by, or under the said Company, or the widows and children of any such persons whose interests may be affected by the discontinuance of the said Company's trade, or who may, from time to time, be reduced, and under the control of the said Board, to grant such compensations, superannuations, or allowances, (the charge thereof to be defrayed by the said Company as hereinafter mentioned) as shall appear reasonable. Provided always, that no such compensations, superannuations, or allowances shall be granted until the expiration of two calendar months after particulars of the compensation, superannuation, or allowance proposed to be so granted, shall have been laid before both Houses of Parliament.

The Company may consider claims of commercial officers reduced, and, under the control of the Board, grant compensations.

VIII. PROVIDED ALWAYS, AND BE IT ENACTED, that within the first fourteen sitting days after the first meeting of Parliament, in every year there be laid before both Houses of Parliament, the particulars of all compensations, superannuations, and allowances so granted, and of the salaries and allowances directed to be paid to such officers as may be appointed by the said Board as aforesaid, during the preceding year.

The particulars thereof to be laid before Parliament every year.

IX. AND BE IT ENACTED, that from and after the said twenty-second day of April, one thousand eight hundred and thirty-four, all the bond debt of the said Company in *Great Britain*, and all the territorial debt of the said Company in *India*, and all other debts which shall on that day be owing by the said Company, and all sums of money, costs, charges, and expences, which after the said

The Company's debts and liabilities charged on India.

twenty-second day of April, one thousand eight hundred and thirty-four, may become payable by the said Company in respect, or by reason of any covenants, contracts, or liabilities then existing, and all debts, expences, and liabilities whatever, which after the same day shall be lawfully contracted and incurred on account of the Government of the said territories, and all payments by this act directed to be made, shall be charged and chargeable upon the revenues of the said territories; and that, neither any stock or effects which the said Company may hereafter have to their own use, nor the dividend by this act secured to them, nor the Directors or Proprietors of the said Company, shall be liable to or chargeable with any of the said debts, payments, or liabilities.

While India is under Government of the Company, they are to be liable as before to suit and their property to continue subject to judgment and execution.

X. PROVIDED ALWAYS, AND BE IT ENACTED, that so long as the possession and Government of the said territories shall be continued to the said Company, all persons and bodies politic shall, and may have, and take the same suits, remedies, and proceedings, legal and equitable, against the said Company, in respect of such debts and liabilities as aforesaid, and the property vested in the said Company in trust as aforesaid, shall be subject and liable to the same judgments and executions in the same manner and form respectively, as if the said property were hereby continued to the said Company to their own use.

A dividend of 10*l.* 10*s.* per cent. per an. to be paid on Company's stock by half yearly payments in Great Britain.

XI. AND BE IT ENACTED, that out of the revenues of the said territories, there shall be paid to or retained by the said Company, to their own use, a yearly dividend after the rate of ten pounds ten shillings, *per centum per annum*, on the present amount of their capital stock; the said dividend to be payable in *Great Britain*, by equal half-yearly payments, on the sixth day of January and the sixth day of July in every year; the first half-yearly payment to be made on the sixth day of July, one thousand eight hundred and thirty-four.

Dividend to be subject to redemption by

XII. PROVIDED ALWAYS, AND BE IT ENACTED, that the said dividend shall be subject to redemption by Parliament upon, and at any time after the thirtieth day of April,

one thousand eight hundred and seventy-four, on payment to the Company, of two hundred pounds sterling, for every one hundred pounds of the said capital stock, together with a proportionate part of the same dividend, if the redemption shall take place on any other day than one of the said half-yearly days of payment. Provided also, that twelve months' notice in writing, signified by the speaker of the House of Commons by the order of the House, shall be given to the said Company, of the intention of Parliament to redeem the said dividend.

Parliament after April 1874, on payment of 200*l.* for 100*l.* stock.

Proviso for notice of redemption.

XIII. PROVIDED ALWAYS AND BE IT ENACTED, that if on or at any time after the said thirtieth day of April, one thousand eight hundred and fifty-four, the said Company shall, by the expiration of the term hereby granted, cease to retain, or shall, by the authority of Parliament, be deprived of the possession and Government of the said territories, it shall be lawful for the said Company, within one year thereafter, to demand the redemption of the said dividend, and provision shall be made for redeeming the said dividend, after the rate aforesaid, within three years after such demand.

If the Company are deprived of the Government of India, they may demand redemption of the dividend.

XIV. AND BE IT ENACTED, that there shall be paid by the said Company, into the Bank of *England*, to the account of the Commissioners for the reduction of the national debt, such sums of money as shall, in the whole, amount to the sum of two millions sterling, with compound interest, after the rate of three pounds ten shillings *per centum per annum*, computed half yearly from the said twenty-second day of April, one thousand eight hundred and thirty-four, on so much of the said sums as shall, from time to time, remain unpaid; and the cashiers of the said Bank shall receive all such sums of money, and place the same to a separate account with the said Commissioners, to be intituled "the Account of the security fund of the *India* Company;" and that as well the monies so paid into the said Bank, as the dividends or interest which shall arise therefrom, shall from time to time be laid out, under the direction of the said Commissioners, in the purchase of capital stock in any of the redeemable public annuities

The Company to pay to Commissioners for reduction of national. Debt 2,000,000*l.*;

to be placed to account of security fund of the Company.

Monies and dividends to be laid out in securities, and dividends placed to same account, until the whole

amounts to 12 millions.

transferable at the Bank of *England*, which capital stock so purchased shall be invested in the names of the said Commissioners, on account of the said security fund, and the dividends payable thereon, shall be received by the said cashiers and placed to the said account, until the whole of the sums so received on such account, shall have amounted to the sum of twelve millions sterling; and the said monies, stock and dividends, or interest, shall be a security fund for better securing to the said Company the redemption of their said dividend, after the rate hereinbefore appointed for such redemption.

Commissioners for reduction of national debt, upon requisition of Court, may raise money for dividends in case of failure or delay of remittance of proper funds.

XV. PROVIDED ALWAYS AND BE IT ENACTED, that it shall be lawful for the said Commissioners for the reduction of the national debt from time to time, and they are hereby required, upon requisition made for that purpose by the Court of Directors of the said Company, to raise and pay to the said Company, such sums of money as may be necessary for the payment of the said Company's dividend, by reason of any failure or delay of the remittances of the proper funds for such payment; such sums of money to be raised by sale, or transfer, or deposit by way of mortgage of a competent part of the said security fund, according as the said Directors, with the approbation of the said Board, shall direct to be repaid into the Bank of *England*, to the account of the security fund, with interest after such rate as the Court of Directors, with the approbation of the said Court, shall fix, out of the remittances which shall be made for answering such dividend, as and when such remittances shall be received in *England*.

Application of dividends of security fund, and the fund itself in aid of revenues.

XVI. PROVIDED ALWAYS AND BE IT ENACTED, that all dividends on the capital stock, forming the said security fund, accruing after the monies received by the said Bank to the account of such fund, shall have amounted to the sum of twelve millions sterling, until the said fund shall be applied to the redemption of the said Company's dividend, and also all the said security fund, or so much thereof as shall remain after the said dividend shall be wholly redeemed after the rate aforesaid, shall be applied in aid of the revenues of the said territories.

XVII. AND BE IT ENACTED, that the said dividend on the Company's capital stock, shall be paid or retained as aforesaid, out of such part of the revenues of the said territories, as shall be remitted to *Great Britain*, in preference to all other charges payable thereout in *Great Britain;* and that the said sum of two millions sterling shall be paid in manner aforesaid, out of any sums which shall, on the said twenty-second day of April, one thousand eight hundred and thirty-four, be due to the said Company from the public, as and when the same shall be received, and out of any monies which shall arise from the sale of any Government stock, on that day belonging to the said Company, in preference to all other payments thereout, and that, subject to such provisions for priority of charge, the revenues of the said territories, and all monies which shall belong to the said Company, on the said twenty-second day of April, one thousand eight hundred and thirty-four, and all monies which shall be thereafter received by the said Company, from and in respect of the property and rights vested in them, in trust as aforesaid, shall be applied to the service of the Government of the said territories, and in defraying all charges and payments by this act created, or confirmed, and directed to be made respectively, in such order as the said Court of Directors, under the control of the said Board, shall, from time to time, direct, any thing in any other act or acts contained to the contrary notwithstanding.

Company's dividends to be paid out of revenues in preference to other charges, and 2,000 000*l.* to be paid out of debt due from the public, and by sale of stock.

Subject to such priorities, revenues and monies to be applied to service of India and purposes of this act, under control.

XVIII. PROVIDED ALSO, AND BE IT ENACTED, that nothing herein contained, shall be construed or operate to the prejudice of any persons claiming or to claim under a deed of covenant, dated the tenth day of *July*, one thousand eight hundred and five, and made between the said Company, of the one part, and the several persons whose hands should be thereto set and affixed, and who respectively were or claimed to be creditors of his Highness the Nabob *Wallah Jah*, formerly Nabob of *Arcot* and of the *Carnatic*, in the *East Indies*, and now deceased, and of his Highness the Nabob *Omduh-ul-Omrah*, late Nobab of *Arcot* and of the *Carnatic*, and now also deceased, and of his Highness the *Ameer-ul-Omrah*, of the other part.

Not to prejudice persons claiming under a covenant between the Company and the creditors of the Nabobs, of Arcot, &c.

His Majesty may appoint Commissioners for the affairs of India.

XIX. AND BE IT ENACTED, that it shall and may be lawful for his Majesty by any letters patent, or by any commission or commissions to be issued under the Great Seal of *Great Britain*, from time to time to nominate, constitute, and appoint, during pleasure, such persons as his Majesty shall think fit to be, and who shall accordingly be, and be styled, "Commissioners for the Affairs of *India*;" and every enactment, provision, matter, and thing relating to the Commissioners for the Affairs of *India* in any other act or acts contained, so far as the same are in force and not repealed by or repugnant to this act, shall be deemed and taken to be applicable to the Commissioners to be nominated as aforesaid.

Ex-officio Commissioners.

XX. AND BE IT ENACTED, that the Lord President of the Council, the Lord Privy Seal, the first Lord of the Treasury, the Principal Secretaries of State, and the Chancellor of the Exchequer, for the time being, shall, by virtue of their respective offices, be and they are hereby declared to be Commissioners for the Affairs of *India*, in conjunction with the persons to be nominated in any such commission as aforesaid, and they shall have the same powers respectively as if they had been expressly nominated in such commission, in the order in which they are herein mentioned, next after the Commissioner first named therein.

Two Commissioners may form a Board.

XXI. AND BE IT ENACTED, that any two or more of the said Commissioners shall, and may form a Board for executing the several powers which by this act, or by any other act or acts, are or shall be given to or vested in the Commissioners for the Affairs of *India*; and that the Commissioner first named in any such letters patent or commission, for the time being, shall be the President of the said Board; and that when any Board shall be formed in the absence of the President, the Commissioner next in order of nomination in this act, or in the said commission, of those who shall be present, shall for that turn preside at the said Board.

first named in Commission to be President; in his absence the next in order.

President and occasional president to have the casting vote.

XXII. AND BE IT ENACTED, that if the Commissioners present at any Board, shall be equally divided in opinion with respect to any matter by them discussed, then, and on every such occasion, the President or in his

absence the Commissioner acting as such, shall have two voices or the casting vote.

XXIII. AND BE IT ENACTED, that the said Board shall, and may nominate and appoint two Secretaries, and such other officers as shall be necessary, to attend upon the said Board, who shall be subject to dismission at the pleasure of the Board; and each of the said Secretaries shall have the same powers, rights, and privileges, as by any act or acts now in force, are vested in the chief Secretary of the Commissioners for the Affairs of *India;* and that the President of the said Board, but no other Commissioner, as such, and the said Secretaries and other officers, shall be paid by the said Company such fixed salaries as his Majesty shall, by any warrant or warrants under his sign manual, countersigned by the Chancellor of the Exchequer for the time being, direct.

The Board to appoint two Secretaries and other officers.

President, secretaries, and officers to be paid such salaries as the crown shall direct.

XXIV. AND BE IT ENACTED, that if at any time the said Board shall deem it expedient to require their Secretaries and other officers of the said Board, or any of them, to take an oath of secrecy, and for the execution of the duties of their respective stations, it shall be lawful for the said Board to administer such oath as they shall frame for the purpose.

Secretaries and officers to take oaths if required by the Board.

XXV. AND BE IT ENACTED, that the said Board shall have, and be invested with full power and authority, to superintend, direct, and control all acts, operations, and concerns of the said Company, which in any wise relate to or concern the Government or revenues of the said territories, or the property hereby vested in the said Company in trust as aforesaid, and all grants of salaries, gratuities and allowances, and all other payments and charges whatever, out of or upon the said revenues and property, respectively, except as hereinafter is mentioned.

The Board of Commissioners to control all acts concerning India, and the sale of property.

XXVI. AND BE IT ENACTED, that the several persons, who on the said twenty-second day of *April*, one thousand eight hundred and thirty-four, shall be Commissioners for the Affairs of *India*, and Secretaries and officers of such Board of Commissioners, shall continue and be

Commissioners, secretaries and officers, on 22d April 1834, to continue until their appointment revoked.

Commissioners for the affairs of *India*, and Secretaries and officers of the said Board respectively, with the same powers and subject to the same restrictions as to salaries as if they had been appointed by virtue of this act, until by the issuing of new patents, commissions, or otherwise, their appointments shall be respectively revoked.

Proprietors may vote by attorney in election of Directors.

XXVII. AND BE IT ENACTED, that if, upon the occasion of taking any ballot on the election of a Director or Directors of the said Company, any Proprietor, who shall be resident within the United Kingdom, shall, by reason of absence, illness, or otherwise, be desirous of voting by letter of attorney, he shall be at liberty so to do, provided, that such letter of attorney shall in every case express the name or names of the candidate or candidates for whom such Proprietor shall be so desirous of voting, and shall be executed within ten days next before such election; and the attorney constituted for such purpose, shall in every case deliver the vote, he is so directed to give openly to the person or persons who shall be authorized by the said Company to receive the same; and every such vote shall be accompained by an affidavit or affirmation, to be made before a Justice of the Peace by the Proprietor, directing the same so to be given, to the same or the like effect as the oath or affirmation now taken by Proprietors voting upon ballots at General Courts of the said Company, and in which such Proprietor shall also state the day of the execution of such letter of attorney; and any person making a false oath or affirmation before a Justice of the Peace, for the purpose aforesaid, shall be held to have thereby committed wilful perjury; and if any person do unlawfully or corruptly procure or suborn any other person to take the said oath or affirmation before a Justice of the Peace, as aforesaid, whereby he or she shall commit such wilful perjury, and shall thereof be convicted, he she, or they, for every such offence, shall incur such pains and penalties as are provided by law against subornation of perjury.

Repeal of restriction in 13 G. 3, c 63 with respect to any person employed in the East

XXVIII. AND BE IT ENACTED, that so much of the act of the thirteenth year of the reign of King *George* the Third, intituled "*An Act for establishing certain regulations for the better management of the Affairs of the*

East India *Company as well in* India *as in* Europe," as enacts that no person employed in any civil or military station in the *East Indies*, or claiming or exercising any power, authority or jurisdiction therein, shall be capable of being appointed, or chosen into the office of Director until such person shall have returned to and been resident in *England* for the space of two years, shall be and is hereby repealed, provided, that if the said Court of Directors, with the consent of the said Board, shall declare such person to be an accountant with the said Company, and that his accounts are unsettled or that a charge against such person is under the consideration of the said Court, such person shall not be capable of being chosen into the office of Director for the term of two years after his return to *England*, unless such accounts shall be settled, or such charge be decided on, or before the expiration of the said term.

Indies being chosen Director.

If such person has unsettled accounts, he shall be ineligible for two years, unless they are sooner settled.

XXIX. AND BE IT FURTHER ENACTED, that the said Court of Directors shall, from time to time, deliver to the said Board, copies of all minutes, orders, resolutions, and proceedings of all Courts of Proprietors, general or special, and of all Courts of Directors, within eight days after the holding of such Courts respectively, and also copies of all letters, advices, and dispatches whatever, which shall, at any time or times, be received by the said Court of Directors, or any Committee of Directors, and which shall be material to be communicated to the said Board, or which the said Board shall, from time to time, require.

Court to deliver to Board copies of minutes &c. of Courts of Proprietors and Directors and of all material letters and dispatches.

XXX. AND BE IT ENACTED, that no orders, instructions, dispatches, official letters, or communications whatever, relating to the said territories or the Government thereof, or to the property or rights vested in the said Company in trust as aforesaid, or to any public matters whatever, shall be at any time sent or given by the said Court of Directors, or any Committee of the said Directors, until the same shall have been submitted for the consideration of, and approved by the said Board, and for that purpose, that copies of all such orders, instructions, dispatches, official letters, or communications, which the said Court of Directors, or any Committee of the said Directors, shall propose to be sent or given, shall be by them previously

No official communications to be sent by the Court until approved by the Board;

laid before the said Board, and that within the space of two months after the receipt of such proposed orders, instructions, dispatches, official letters, or communications, the said Board shall either return the same to the said Court of Directors or Committee of Directors, with their approbation thereof, signified under the hand of one of the Secretaries of the said Board, by the order of the said Board; or if the said Board shall disapprove, alter, or vary, in substance, any of such proposed orders, instructions, dispatches, official letters, or communications, in every such case, the said Board shall give to the said Directors, in writing, under the hand of one of the Secretaries of the said Board, by order of the said Board, their reason in respect thereof, together with their directions to the said Directors in relation thereto; and the said Directors shall, and they are hereby required, forthwith to send the said orders, instructions, dispatches, official letters or communications, in the form approved by the said Board, to their proper destinations; Provided, always, that it shall be lawful for the said Board, by minutes, from time to time to be made for that purpose, and entered on the records of the said Board, and to be communicated to the said Court, to allow such classes of orders, instructions, dispatches, official letters or communications, as shall in such minutes be described to be sent, or given by the said Court without having been previously laid before the said Board.

Proviso, except such classes of communications as the Board may allow.

XXXI. AND BE IT ENACTED, that whenever the said Court of Directors shall omit to prepare and submit for the consideration of the said Board, any orders, instructions, dispatches, official letters, or communications, beyond the space of fourteen days after requisition made to them by order of the said Board, it shall and may be lawful to and for the said Board, to prepare and send to the said Directors any orders, instructions, dispatches, official letters, or communications, together with their directions relating thereto; and the said Directors, shall and they are hereby required, forthwith to transmit the same to their proper destinations.

If the Court omit to frame official communications for consideration of the Board, they may prepare them.

Court to send them.

XXXII. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing herein contained, shall extend or be construed to

Representations may be

extend to restrict or prohibit the said Directors from expressing, within fourteen days, by representation in writing to the said Board, such remarks, observations or explanations, as they shall think fit, touching or concerning any directions which they shall receive from the said Board; and that the said Board shall, and they are hereby required, to take every such representation, and the several matters therein contained or alleged, into their consideration, and to give such further directions thereupon as they shall think fit and expedient, which shall be final and conclusive upon the said Directors.

made by Court as to official communications; and the Board is to consider such representations, and give final orders.

XXXIII. AND BE IT ENACTED, that if it shall appear to the said Court of Directors, that any orders, instructions, dispatches, official letters or communications, except such as shall pass through the Secret Committee, upon which directions may be so given by the said Board as aforesaid, are contrary to law, it shall be in the power of the said Board and the said Court of Directors, to send a special case, to be agreed upon by and between them, and to be signed by the President of the said Board and the Chairman of the said Company, to three or more of the Judges of His Majesty's Court of King's Bench, for the opinion of the said Judges, and the said Judges are hereby required to certify their opinion upon any case so submitted to them, and to send a certificate thereof to the said President and Chairman, which opinion shall be final and conclusive.

If Court think the orders of Board contrary to law, the Court of King's Bench may certify their opinion on any case which may be agreed upon; such opinion to be conclusive.

XXXIV. PROVIDED ALWAYS, AND BE IT ENACTED AND DECLARED, that the said Board shall not have the power of appointing any of the servants of the said Company, or of directing or interfering with the officers and servants of the said Company, employed in the home establishment, nor shall it be necessary for the said Court of Directors to submit for the consideration of the said Board, their communications with the officers or servants employed in their said home establishment, or with the legal advisers of the said Company.

Board not empowered to appoint officers of the Company, or to interfere with home officers.

XXXV. AND BE IT ENACTED, that the said Court of Directors shall, from time to time, appoint a Secret

Directors to appoint a secret

Committee, who shall take the following oath.

Committee, to consist of any number not exceeding three of the said Directors, for the particular purposes in this act specified; which said Directors so appointed shall, before they or any of them shall act in the execution of the powers and trusts hereby reposed in them, take an oath of the tenor following; (that is to say,)

"I *(A. B.)* do swear, that I will, according to the best of my skill and judgment, faithfully execute the several trusts and powers reposed in me, as a member of the Secret Committee, appointed by the Court of Directors of the India Company; I will not disclose or make known any of the secret orders, instructions, dispatches, official letters or communications, which shall be sent or given to me by the commissioners for the Affairs of *India,* save only to the other members of the said Secret Committee, or to the person or persons who shall be duly nominated and employed in transcribing or preparing the same respectively, unless I shall be authorized by the said Commissioners to disclose and make known the same."

So help me GOD.

Which said oath shall and may be administered by the several and respective members of the said Secret Committee to each other; and being so by them taken and subscribed, shall be recorded by the Secretary or Deputy Secretary of the said Court of Directors for the time being, amongst the acts of the said Court.

If the Board are of opinion that any matters wherein Indian or other States are concerned, require secrecy, the Board may send official communications through Secret Committee.

XXXVI. PROVIDED ALSO AND BE IT ENACTED, that if the said Board shall be of opinion, that the subject matter of any of their deliberations concerning the levying war or making peace, or treating or negotiating with any of the native Princes or States in *India,* or with any other Princes or States, or touching the policy to be observed with respect to such Princes or States, intended to be communicated in orders, dispatches, official letters, or communications, to any of the Governments or presidencies in *India,* or to any officers or servants of the said Company, shall be of a nature to require secrecy, it shall and may be lawful for the said Board to send their orders, dispatches, official letters or communications, to the Secret Committee

of the said Court of Directors, to be appointed, as is byt his act directed, who shall thereupon, without disclosing the same, transmit the same according to the tenor thereof, or pursuant to the directions of the said Board, to the respective Governments and presidencies, officers and servants; and that the said Governments and presidencies, officers and servants, shall be bound to pay a faithful obedience thereto, in like manner as if such orders, dispatches, official letters, or communications, had been sent to them by the said Court of Directors.

The Court to submit to the Board an estimate of salaries of Directors and other expences of the India House, which shall be subject to reduction.

XXXVII. AND BE IT ENACTED, that the said Court of Directors shall, before the twenty-second day of *April*, one thousand eight hundred and thirty-four, and afterwards, from time to time, so often as reductions of the establishment of the said Court or other circumstances may require, frame and submit to the said Board, an estimate of the gross sum which will be annually required for the salaries of the Chairman, deputy Chairman, and members of the said Court, and the officers and secretaries thereof, and all other proper expences fixed and contingent thereof, and General Courts of Proprietors, and such estimate shall be subject to reduction by the said Board, so that the reasons for such reduction be given to the said Court of Directors; and any sum not exceeding the sum mentioned in such estimate, or (if the same shall be reduced,) in such reduced estimate, shall be annually applicable, at the discretion of the Court of Directors, to the payment of the said salaries and expences; and it shall not be lawful for the said Board to interfere with or control the particular application thereof, or to direct what particular salaries or expences shall, from time to time, be increased or reduced: Provided always, that such and the same accounts shall be kept and rendered of the sums to be applied in defraying the salaries and expences aforesaid, as of the other branches of the expenditure of the said Company.

The sum allowed to be applicable to such purposes at discretion of the Court of Directors.

Accounts of application to be rendered.

Presidency of Fort William in Bengal to be divided into two presidencies.

XXXVIII AND BE IT ENACTED, that the territories now subject to the Government of the presidency of Fort William in Bengal, shall be divided into two distinct presidencies, one of such presidencies, in which shall be included Fort William aforesaid, to be styled the

The Court to declare the limits from time to time, of the several presidencies.

presidency of Fort William in Bengal, and the other of such presidencies to be styled the presidency of Agra; and that it shall be lawful for the said Court of Directors, under the control by this act provided, and they are hereby required, to declare and appoint, what part or parts of any of the territories under the Government of the said Company shall, from time to time, be subject to the Government of each of the several presidencies now subsisting, or to be established as aforesaid, and from time to time, as occasion may require, to revoke and alter, in the whole or in part, such appointment, and such new distribution of the same as shall be deemed expedient.

Government of India.

XXXIX. AND BE IT ENACTED, that the superintendence, direction, and control of the whole civil and military Government of all the said territories and revenues in *India*, shall be and is hereby vested in a Governor-General and Councillors, to be styled "the Governor-General of *India* in Council."

There shall be four Ordinary Councillors, three of whom shall be servants of the Company.

XL. AND IT IS ENACTED, that there shall be four ordinary members of the said Council, three of whom shall, from time to time, be appointed by the said Court of Directors, from amongst such persons as shall be or shall have been servants of the said Company; and each of the said three ordinary members of Council shall, at the time of his appointment, have been in the service of the said Company, for at least ten years; and if he shall be in the military service of the said Company, he shall not, during his continuance in office as a Member of Council, hold any military command, or be employed in actual military duties; and that the fourth ordinary Member of Council shall, from time to time, be appointed from amongst persons who shall not be servants of the said Company by the said Court of Directors, subject to the approbation of his Majesty, to be signified in writing, by his royal sign manual, countersigned by the President of the said Board; Provided, that such last mentioned Member of Council shall not be entitled to sit or vote in the said Council except at meetings thereof for making laws and regulations; And it shall be lawful for the said Court of Directors to appoint the Commander-in-Chief of the Company's forces in

No military officer to hold any command whilst a member.

The fourth member not to be appointed from the Company's servants.

Commander-in Chief one.

India, and if there shall be no such Commander-in-Chief or the offices of such Commander-in-Chief and of Governor General of *India*, shall be vested in the same person, then the Commander-in-Chief of the forces on the Bengal establishment, to be an extraordinary Member of the said Council, and such extraordinary Member of Council shall have rank and precedence at the Council Board, next after the Governor-General.

Governor General and the Members of Council on 22d April 1834 to be so under this act.

XLI. AND BE IT ENACTED, that the person who shall be Governor-General of the presidency of Fort William in Bengal, on the twenty-second day of *April*, one thousand eight hundred and thirty-four, shall be the first Governor-General of *India* under this act, and such persons as shall be Members of Council of the same presidency on that day, shall be respectively Members of the Council constituted by this act.

Filling up vacancies in these offices.

XLII. AND BE IT ENACTED, that all vacancies happening in the office of Governor-General of *India* shall, from time to time, be filled up by the said Court of Directors, subject to the approbation of his Majesty, to be signified in writing, by his royal sign manual, countersigned by the President of the said Board.

The Governor-General in Council empowered to legislate for India, except as to matters herein mentioned.

XLIII. AND BE IT ENACTED, that the said Governor-General in Council shall have power to make laws and regulations for repealing, amending, or altering any laws or regulations whatever, now in force or hereafter to be in force, in the said territories, or any part thereof, and to make laws and regulations for all persons, whether *British* or native, foreigners or others, and for all Courts of Justice, whether established by his Majesty's charters or otherwise, and the jurisdictions thereof, and for all places and things whatsoever, within and throughout the whole and every part of the said territories, and for all servants of the said Company within the dominions of Princes and States in alliance with the said Company; save and except that the said Governor-General in Council shall not have the power of making any laws or regulations which shall in any way repeal, vary, suspend, or affect any of the provisions of this act, or any of the provisions of the acts for

punishing mutiny and desertion of officers and soldiers, whether in the service of his Majesty or the said Company, or any provisions of any act hereafter to be passed, in anywise affecting the said Company, or the said territories, or the inhabitants thereof, or any laws or regulations which shall, in any way, affect any prerogative of the Crown, or the authority of Parliament, or the constitution or rights of the said Company, or any part of the unwritten laws or constitution of the United Kingdom of *Great Britain* and *Ireland*, whereon may depend, in any degree, the allegiance of any persons to the Crown of the United Kingdom, or the sovereignty or dominion of the said Crown over any part of the said territories.

If the Court of Directors disallow the laws, Governor in Council to repeal them.

XLIV. PROVIDED ALWAYS AND BE IT ENACTED, that in case the said Court of Directors, under such control as by this act is provided, shall signify to the said Governor-General in Council, their disallowance of any laws or regulations by the said Governor-General in Council made, then, and in every such case, upon receipt by the said Governor-General in Council, of notice of such disallowance, the said Governor-General in Council shall forthwith repeal all laws and regulations so disallowed.

All such laws and regulations to be of the same force as any act of Parliament.

XLV. PROVIDED ALSO, AND BE IT ENACTED, that all laws and regulations made as aforesaid, so long as they shall remain unrepealed, shall be of the same force and effect within and throughout the said territories, as any act of Parliament would or ought to be within the same territories, and shall be taken notice of by all Courts of Justice whatsoever within the same territories, in the same manner as any public act of Parliament would and ought to be taken notice of; and it shall not be necessary to register or publish in any Court of Justice, any laws or regulations made by the said Governor-General in Council.

Registration unnecessary.

Restricting the power of punishing with death European subjects, &c.

XLVI. PROVIDED ALSO AND BE IT ENACTED, that it shall not be lawful for the said Governor-General in Council, without the previous sanction of the said Court of Directors, to make any law or regulation, whereby power shall be given to any Courts of Justice, other than the Courts of Justice established by his Majesty's charters, to

sentence to the punishment of death any of his Majesty's natural born subjects, born in *Europe*, or the children of such subjects, or which shall abolish any of the Courts of Justice established by his Majesty's charters.

XLVII. AND BE IT ENACTED, that the said Court of Directors shall forthwith submit, for the approbation of the said Board, such rules as they shall deem expedient for the procedure of the Governor-General in Council, in the discharge and exercise of all powers, functions, and duties imposed on or vested in him by virtue of this act, or to be imposed or vested in him by any other act or acts; which rules shall prescribe the modes of promulgation of any laws or regulation to be made by the said Governor-General in Council, and of the authentication of all acts and proceedings whatsoever of the said Governor-General in Council; and such rules, when approved by the said Board of Commissioners, shall be of the same force as if they had been inserted in this act: Provided always, that such rules shall be laid before both Houses of Parliament in the session next after the approval thereof.

The Court to submit to the Board, rules for the procedure of Governor-General in Council in the exercise of the powers vested in him by this act.

Rules to prescribe modes of promulgation of the laws to be made

Rules to be laid before Parliament.

XLVIII. PROVIDED ALWAYS AND BE IT ENACTED, that all laws and regulations shall be made at some meeting of the Council, at which the said Governor-General and at least three of the ordinary Members of Council shall be assembled, and that all other functions of the said Governor-General in Council may be exercised by the said Governor-General, and one or more ordinary Member or Members of Council, and that in every case of difference of opinion at meetings of the said Council, where there shall be an equality of voices, the said Governor-General shall have two votes or the casting vote.

Quorum of Governor General and Members in Council.

XLIX. PROVIDED ALWAYS AND BE IT ENACTED, that when and so often as any measure shall be proposed before the said Governor-General in Council, whereby the safety, tranquility or interests of the *British* possessions in *India*, or any part thereof, are or may be, in the judgment of the said Governor-General, essentially affected, and the said Governor-General, shall be of opinion either that the measure so proposed, or to be adopted, or carried into execution,

Manner of proceeding when any measure is proposed whereby the safety or peace of India may be essentially affected.

or that the same ought to be suspended or wholly rejected and the majority in Council then present shall differ in and dissent from such opinion, the said Governor-General and Members of Council are hereby directed, forthwith, mutually to exchange with, and communicate to each other, in writing under their respective hands, to be recorded at large on their secret consultations, the grounds and reasons of their respective opinions; and if, after considering the same, the said Governor-General and the majority in Council shall still differ in opinion, it shall be lawful for the said Governor-General, of his own authority, and on his own responsibility, to suspend or reject the measure so proposed, in part or in whole, or to adopt and carry the measure, so proposed into execution, as the said Governor-General shall think fit and expedient.

Council to assemble at any place in India

L. AND BE IT ENACTED, that the said Council shall, from time to time, assemble at such place or places as shall be appointed by the said Governor-General in Council, within the said territories, and that as often as the said Council shall assemble within any of the presidencies of *Fort Saint George, Bombay*, or *Agra*, the Governor of such presidency shall act as an extraordinary Member of Council.

Nothing in this act to affect the right of Parliament to legislate for India.

Express reservation.

LI. PROVIDED ALWAYS AND BE IT ENACTED, that nothing herein contained, shall extend to affect, in any way, the right of Parliament to make laws for the said territories and for all the inhabitants thereof; and it is expressly declared, that a full, complete, and constantly existing right and power is intended to be reserved to Parliament to control, supersede, or prevent all proceedings and acts whatsoever of the said Governor-General in Council, and to repeal and alter, at any time, any law or regulation whatsoever, made by the said Governor-General in Council, and in all respects to legislate for the said territories and all the inhabitants thereof, in as full, and ample a manner, as if this act had not been passed; and the better to enable Parliament to exercise at all times such right and power,

Laws and regulations to be laid before Parliament.

all laws and regulations made by the said Governor-General in Council shall be transmitted to England, and laid

before both Houses of Parliament, in the same manner as is now by law provided, concerning the rules and regulations made by the several Governments in *India*.

All enactments relating to the Governor General of Fort William in Council, and alone, shall apply to Governor-General of India in Council, and alone.

LII. AND BE IT ENACTED, that all enactments, provisions, matters, and things relating to the Governor-General of Fort William in Bengal in Council, and the Governor-General of Fort William in Bengal alone, respectively in any other act or acts contained, so far as the same are now in force, and not repealed by or repugnant to the provisions of this act, shall continue and be in force and be applicable to the Governor-General of *India* in Council, and to the Governor-General of *India* alone, respectively.

A Law Commission to be appointed to inquire into the jurisdiction &c. of the existing Courts of Justice and Police establishments, and the nature and operation of the laws.

LIII. "AND WHEREAS it is expedient, that subject to "such special arrangements as local circumstances may re-"quire, a general system of judicial establishments and po-"lice, to which all persons whatsoever, as well *Europeans* "as Natives, may be subject, should be established in the "said territories at an early period, and that such laws as "may be applicable in common to all classes of the inhabi-"tants of the said territories, due regard being had to the "rights, feelings, and peculiar usages of the people, should "be enacted, and that all laws and customs having the "force of law within the same territories should be ascer-"tained and consolidated, and as occasion may require, "amended: Be it therefore enacted, that the said Governor-General of *India* in Council shall, as soon as conveniently may be after the passing of this act, issue a commission, and from time to time, commissions, to such persons as the said Court of Directors, with the approbation of the said Board of Commissioners, shall recommend for that purpose, and to such other persons, if necessary, as the said Governor-General in Council shall think fit, all such persons, not exceeding in the whole at any one time five in number, and to be styled "the India Law Commissioners," with all such powers as shall be necessary for the purposes hereinafter mentioned; and the said Commissioners shall fully inquire into the jurisdiction, powers, and rules, of the existing Courts of Justice and Police establishments in the said territories, and all existing forms of judicial procedure, and into the nature and operation of

all laws, whether civil or criminal, written or customary, prevailing and in force in any part of the said territories, and whereto any inhabitants of the said territories, whether *Europeans* or others, are now subject; and the said Commissioners shall, from time to time, make reports, in which they shall fully set forth the result of their said inquiries, and shall from time to time suggest such alterations as may, in their opinion, be beneficially made in the said Courts of Justice and Police establishments, forms of judicial procedure and laws, due regard being had to the distinction of castes, difference of religion, and the manners and opinions prevailing among different races, and in different parts of the said territories.

Commissioners from time to time to report the result of their inquiries.

LIV. AND BE IT ENACTED, that the said Commissioners shall follow such instructions with regard to the researches and inquiries to be made and the places to be visited by them, and all their transactions with reference to the objects of their commission, as they shall, from time to time, receive from the said Governor-General of *India* in Council; and they are hereby required to make to the said Governor-General in Council, such special reports upon any matters as by such intructions may, from time to time, be required; and the said Governor-General in Council shall take into consideration the reports from time to time to be made by the said *India* Law Commissioners, and shall transmit the same, together with the opinions or resolutions of the said Governor-General in Council thereon, to the said Court of Directors; and which said reports, together with the said opinions or resolutions, shall be laid before both Houses of Parliament in the same manner as is now by law provided, concerning the rules and regulations made by the several Governments in *India*.

Commissioners to follow instructions of Governor-General in Council, and to make special reports when required.

Governor-General in Council to consider reports, and transmit them with opinions thereupon.

LV. AND BE IT ENACTED, that it shall and may be lawful, for the Governor-General of *India* in Council, to grant salaries to the said *India* Law Commissioners and their necessary officers and attendants, and to defray such other expences as may be incident to the said Commission, and that the salaries of the said Commissioners shall be according to the highest scale of remuneration given to

Salaries to be granted to Law Commissioners.

any of the officers or servants of the *India* Company below the rank of Members of Council.

LVI. AND BE IT ENACTED, that the executive Government of each of the several presidencies of *Fort William* in *Bengal*, *Fort Saint George*, *Bombay*, and *Agra*, shall be administered by a Governor and three Councillors, to be styled, "the Governor in Council of the said presidencies of *Fort William* in *Bengal*, *Fort Saint George*, *Bombay*, and *Agra*, respectively;" and the said Governor and Councillors respectively of each of such presidencies shall have the same rights and voices in their assemblies, and shall observe the same order and course in their proceedings, as the Governors in Council of the presidencies of *Fort Saint George* and *Bombay* now have and observe, and that the Governor-General of *India* for the time being, shall be Governor of the presidency of *Fort William* in *Bengal*.

The executive Government of the presidencies to be administered by a Governor & three Councillors.

Governor of Fort William.

LVII. PROVIDED ALWAYS AND BE IT ENACTED, that it shall and may be lawful for the said Court of Directors, under such control as is by this act provided, to revoke and suspend, so often and for such periods as the said Court shall, in that behalf direct, the appointment of Councils in all or any of the said presidencies, or to reduce the number of Councillors in all or any of the said Councils; and during such time as a Council shall not be appointed in any such presidency, the executive Government thereof shall be administered by a Governor alone.

Directors empowered to revoke the appointment of Councils or to reduce the number of Councillors.

LVIII. AND BE IT ENACTED, that the several persons who, on the said twenty-second day of *April*, one thousand eight hundred and thirty-four, shall be Governors of the respective presidencies of *Fort Saint George*, and *Bombay*, shall be the first Governors of the said presidencies respectively under this act; and that the office of Governor of the said presidency of *Agra*, and all vacancies happening in the offices of the Governors of the said presidencies respectively, shall be filled up by the said Court of Directors, subject to the approbation of his Majesty, to be signified under his royal sign manual, countersigned by the said President of the said Board of Commissioners.

Governors of Fort St. George and Bombay.

Governor of Agra and vacancies in presidencies to be filled up by the Court

The Governors of the presidencies to have the powers and immunities of the present Governors of Madras and Bombay, but not to make or suspend laws except &c or to create offices or grant salaries.

LIX. AND BE IT ENACTED, that in the presidencies in which the appointments of a Council shall be suspended, under the provision hereinbefore contained, and during such time as Councils shall not be appointed therein respectively, the Governors appointed under this act, and in the presidencies in which Councils shall, from time to time, be appointed, the said Governors in their respective Councils, shall have all the rights. powers, duties, functions, and immunities whatsoever, not in anywise repugnant to this act, which the Governors of *Fort Saint George* and *Bombay* in their respective Councils now have within their respective presidencies; and that the Governors and Members of Council of presidencies appointed by or under this act, shall severally have all the rights, powers, and immunities respectively, not in anywise repugnant to this act, which the Governors and Members of Council of the presidencies of *Fort Saint George* and *Bombay* respectively, now have in their respective presidencies; provided that no Governor or Governors in Council shall have the power of making or suspending any regulations or laws in any case whatever, unless in cases of urgent necessity (the burthen of the proof whereof shall be on such Governor or Governor in Council), and then only until the decision of the Governor-General of *India* in Council shall be signified thereon; And, provided also, that no Governor or Governor in Council shall have the power of creating any new office, or granting any salary, gratuity, or allowance, without the previous sanction of the Governor-General of *India* in Council.

If Court of Directors neglect for two months to supply vacancy in any office, the King to appoint.

LX. PROVIDED ALWAYS AND BE IT ENACTED, that when and so often as the said Court of Directors shall neglect for the space of two calendar months, to be computed from the day whereon the notification of the vacancy of any office or employment in *India* in the appointment of the said Court, shall have been received by the said Court, to supply such vacancy, then and in every such case it shall be lawful for his Majesty to appoint, by writing, under his sign manual, such person as his Majesty shall think proper to supply such vacancy; and that every person so appointed, shall have the same powers

privileges, and authorities as if he or they had been appointed by the said Court, and shall not be subject to removal or dismissal without the approbation and consent of his Majesty.

LXI. AND BE IT ENACTED, that it shall be lawful for the said Court of Directors to appoint any person or persons provisionally, to succeed to any of the offices aforesaid, for supplying any vacancy or vacancies therein, when the same shall happen by the death or resignation of the person or persons, holding the same office or offices respectively, or on his or their departure from *India* with intent to return to *Europe*, or on any event or contingency, expressed in any such provisional appointment or appointments to the same respectively, and such appointments again to revoke, provided that every provisional appointment to the several offices of Governor-General of *India*, Governor of a presidency, and Member of Council of *India*, by this act directed to be appointed from amongst persons, who shall not be servants of the said Company, shall be subject to the approbation of his Majesty, to be signified as aforesaid; but that no person so appointed to succeed provisionally to any of the said offices, shall be entitled to any authority, salary, or emolument appertaining thereto, until he shall be in the actual possession of such office.

Power for the Court to make provisional appointments to any of such offices.

Provisional appointments of certain officers to be approved by his Majesty.

LXII. AND BE IT ENACTED, that if any vacancy shall happen in the office of Governor-General of *India*, when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case, the ordinary Member of Council next in rank to the said Governor-General, shall hold and execute the said office of Governor-General of *India* and Governor of the presidency of *Fort William* in *Bengal*, until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor-General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor-General of *India*, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor-General foregoing

In case of vacancy in the office of Governor General, and no successor upon the spot, the ordinary Member of Council next in rank, to act as Governor-General.

his salary and allowance of a Member of Council for the same period.

In case of a vacancy in the office of Governor of any of the subordinate presidencies, and no provisional or other successor on the spot.

LXIII. AND BE IT ENACTED, that if any vacancy shall happen in the office of Governor of *Fort Saint George, Bombay*, or *Agra*, when no provisional or other successor shall be upon the spot, to supply such vacancy, then and in every such case, if there shall be a Council in the presidency in which such vacancy shall happen, the Member of such Council, who shall be next in rank to the Governor, other than the Commander-in-Chief or officer commanding the forces of such presidency, and if there shall be no Council, then the Secretary of Government of the said presidency who shall be senior in the said office of Secretary, shall hold and execute the said office of Governor until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and that every such acting Governor shall, during the time of his continuing to act as such, receive and be entitled to the emoluments and advantages appertaining to the office by him supplied, such acting Governor foregoing all salaries and allowances by him held and enjoyed at the time of his being called to supply such office.

In case of a vacancy in the office of a Member of Council when no provisional or other successor on the spot.

LXIV. AND BE IT ENACTED, that if any vacancy shall happen in the office of an ordinary Member of Council of *India*, when no person provisionally or otherwise appointed to succeed thereto, shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor-General in Council; and if any vacancy shall happen in the office of a Member of Council of any presidency, when no person provisionally or otherwise appointed to succeed thereto, shall be then present on the spot, then and on every such occasion, such vacancy shall be supplied by the appointment of the Governor in Couucil of the presidency, in which such vacancy shall happen; and, until a successor shall arrive, the person so nominated shall execute the office by him supplied, and shall have all the powers thereof, and shall have and be entitled to the salary and other emoluments and advangates appertaining to the said office during

his continuance therein, every such temporary Member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office: Provided always, that no person shall be appointed a temporary Member of Council, who might not have been appointed by the said Court of Directors, to fill the vacancy supplied by such temporary appointment.

The Governor-General in Council to have control over the presidencies.

LXV. AND BE IT ENACTED, that the said Governor-General in Council shall have and be invested by virtue of this act, with full power and authority, to superintend and control the Governor and Governors in Council of *Fort William* in *Bengal, Fort Saint George, Bombay,* and *Agra,* in all points relating to the civil or military administration of the said presidencies respectively, and the said Governors and Governors in Council shall be bound to obey such orders and instructions of the said Governor-General in Council in all cases whatsoever.

Drafts of laws proposed by Governors to be taken into consideration by Governor-General in Council.

LXVI AND BE IT ENACTED, that it shall and may be lawful for the Governors, or Governors in Council of *Fort William* in *Bengal, Fort Saint George, Bombay,* and *Agra* respectively, to propose to the said Governor-General in Council drafts of projects of any laws or regulations, which the said Governors or Governors in Council respectively may think expedient, together with their reasons for proposing the same; and the said Governor-General in Council, is hereby required to take the same and such reasons into consideration, and to communicate the resolutions of the said Governor-General in Council thereon to the Governor or Governors in Council by whom the same shall have been proposed.

Powers of Governors of presidencies not to be suspended.

LXVII. AND BE IT ENACTED, that when the said Governor-General shall visit any of the presidencies of *Fort Saint George, Bombay,* or *Agra,* the powers of the Governors of those presidencies respectively shall not, by reason of such visit, be suspended.

Communications to be trans-

LXVIII. AND BE IT ENACTED, that the said Governors and Governors in Council of the said presidencies of *Fort*

mitted by Governor General in Council.

William in *Bengal*, *Fort Saint George*, *Bombay* and *Agra* respectively, shall, and they are hereby respectively required, regularly to transmit to the said Governor-General in Council, true and exact copies of all such orders and acts of their respective Governments, and also advice and intelligence of all transactions and matters which shall have come to their knowledge, and which they shall deem material to be communicated to the said Governor-General in Council as aforesaid, or as the said Governor-General in Council shall, from time to time, require.

The Governor General in Council may appoint a Deputy Governor of Bengal as exigencies may require.

LXIX. AND BE IT ENACTED, that it shall be lawful for the said Governor-General in Council, as often as the exigencies of the public service may appear to him to require, to appoint such one of the ordinary Members of the said Council of *India*, as he may think fit, to be Deputy-Governor of the said presidency of *Fort William* in *Bengal*, and such Deputy-Governor shall be invested with all the powers and perform all the duties of the said Governor of the presidency of *Fort Witliam* in *Bengal*, but shall receive no additional salary by reason of such appointment.

Provision in case the Governor-General in Council shall declare it expedient for the Governor-General to visit any part of India without his Coun il.

LXX. AND BE IT ENACTED, that whenever the said Governor-General in Council shall declare, that it is expedient that the said Governor-General should visit any part of *India* unaccompanied by any Member or Members of the Council of *India*, it shall be lawful for the said Governor-General in Council, previously to the departure of the said Governor-General, to nominate some members of the Council of *India* to be President of the said Council, in whom, during the absence of the said Governor-General from the said presidency of *Fort William* in *Bengal*, the powers of the said Governor-General in assemblies of the said Council shall be reposed; and it shall be lawful in every such case for the said Governor-General in Council, by the law or regulation for that purpose to be made, to authorize the Governor-General alone to exercise all or any of the powers which might be exercised by the said Governor-General in Council, except the power of making laws or regulations: Provided always, that during

the absence of the Governor-General, no law or regulation shall be made by the said President and Council without the assent in writing of the said Governor-General.

LXXI. AND BE IT ENACTED, that there shall not, by reason of the division of the territories, now subject to the Government of the presidency of *Fort William* in *Bengal*, into two presidencies as aforesaid, be any separation between the establishments and forces thereof respectively, or any alteration in the course and order of promotion and succession of the Company's servants in the same two presidencies respectively, but that all the servants, civil and military, of the *Bengal* establishments and forces, shall and may succeed, and be appointed to all commands and offices within either of the said presidencies respectively, as if this act had not been passed.

The new presidency of Agra not to affect promotion and succession to commands and offices, civil and military, in Bengal and Agra.

LXXII. AND BE IT ENACTED, that for the purpose of an act passed in the *fourth* year of the reign of his late Majesty, King *George* the Fourth, intituled "*An Act to consolidate and amend the laws for punishing mutiny and desertion of officers and soldiers in the service of the* East India *Company, and to authorize soldiers and sailors in the* East Indies *to send and receive letters at a reduced rate of postage,*" *and* of any articles of war made or to be made under the same, the presidency of *Fort William* in *Bengal*, shall be taken in and deemed to comprise under and within it, all the territories which by or in virtue of this act shall be divided between the presidencies of *Fort William* in *Bengal* and *Agra* respectively, and shall, for all the purposes aforesaid, be taken to be the presidency of *Fort William* in *Bengal* in the said act mentioned.

Presidency of Fort William to be entire for the purposes of the mutiny act.

LXXIII. AND BE IT ENACTED, that it shall be lawful for the said Governor-General in Council, from time to time, to make articles of war for the Government of the native officers and soldiers in the military service of the Company, and for the administration of justice by Courts-martial, to be holden on such officers and soldiers, and such articles of war, from time to time, to repeal or vary and amend; and such articles of war shall be made and

Articles of war to be made by Governor General in Council.

taken notice of in the same manner as all other the laws and regulations to be made by the said Governor-General in Council under this act, and shall prevail and be in force, and shall be of exclusive authority over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong or wheresoever they may be serving: Provided, nevertheless, that until such articles of war shall be made by the said Governor-General in Council, any articles of war for or relating to the government of the Company's native forces, which at the time of this act coming into operation, shall be in force and use in any part or parts of the said territories, shall remain in force.

His Majesty may remove any officer, civil or military, of the Company in India.

LXXIV. AND BE IT ENACTED, that it shall be lawful for his Majesty, by any writing under his sign manual, countersigned by the President of the said Board of Commissioners, to remove or dismiss any person holding any office, employment or commission, civil or military, under the said Company in *India*, and to vacate any appointment or commission of any person to any such office or employment; provided, that a copy of every such writing, attested by the said President, shall, within eight days, after the same shall be signed by his Majesty, be transmitted or delivered to the Chairman or Deputy Chairman of the said Company.

The power of the Directors to remove their servants preserved

LXXV. PROVIDED ALWAYS AND BE IT ENACTED, that nothing in this act contained, shall take away the power of the said Court of Directors, to remove or dismiss any of the officers or servants of the said Company, but that the said Court shall, and may at all times, have full liberty to remove or dismiss any of such officers or servants at their will and pleasure; provided, that any servant of the said Company appointed by his Majesty, through the default of appointment by the said Court of Directors, shall not be dismissed or removed without his Majesty's approbation as hereinbefore is mentioned.

Salaries of Governor General,

LXXVI. AND BE IT ENACTED, that there shall be paid to the several officers hereinafter named, the several salaries

set against the names of such officers, subject to such reduction of the said several salaries repectively, as the said Court of Directors, with the sanction of the said Board, may at any time think fit; (that is to say,)

Governors and Members of Council.

To the Governor-General of *India*, two hundred and forty thousand sicca rupees.

To each ordinary Member of the Council of *India* ninety-six thousand sicca rupees.

To each Governor of the presidencies of *Fort Saint George*, *Bombay*, and *Agra*, one hundred and twenty thousand sicca rupeess.

To each Member of any Council to be appointed in any presidency, sixty thousand sicca rupees.

And the salaries of the said officers respectively shall commence from their respectively taking upon them the execution of their respective offices, and the said salaries shall be the whole profit or advantage which the said officers shall enjoy during their continuance in such offices respectively; And it shall be, and it is hereby declared to be, a misdemeanor for any such officer to accept for his own use, in the discharge of his office, any present, gift, donation, gratuity, or reward, pecuniary or otherwise, whatsoever, or to trade or traffic for his own benefit or for the benefit of any other person or persons whatsoever; and the said Court of Directors are hereby required to pay to all and singular, the officers and persons hereinafter named, who shall be resident in the United Kingdom, at the time of their respective appointments, for the purpose of defraying the expences of their equipment and voyage, such sums of money as are set against the names of such officers and persons respectively; (that is to say,)

Commencement thereof.

Acceptance of gratuities, a misdemeanor.

Passage money fixed.

To the Governor-General, five thousand pounds

To each Member of the Council of *India*, one thousand two hundred pounds.

To each Governor of the presidencies of *Fort Saint George*, *Bombay* and *Agra*, two thousand five hundred pounds.

PROVIDED ALSO, that any Governor-General, Governor, or Member of Council appointed, by or by virtue of this

act, who shall at the time of passing this act, hold the office of Governor-General, Governor, or Member of Council respectively, shall receive the same salary and allowances; that he would have received, if this act had not been passed.

Governor General and Governors to forego pensions and other salaries from the Crown or Company, while they hold office.

LXXVII. PROVIDED ALWAYS AND BE IT ENACTED, that if any Governor-General, Governor or ordinary Member of the Council of *India*, or any Member of the Council of any presidency, shall hold or enjoy any pension, salary, or any place, office or employment of profit, under the Crown, or any public office of the said Company, or any annuity, payable out of the civil or military fund of the said Company, the salary of his office of Governor-General of *India*, Governor or Member of Council, shall be reduced by the amount of the pension, salary, annuity or profits of office so respectively held or enjoyed by him.

Directors to make regulations for the distribution of patronage in India.

LXXVIII. AND BE IT ENACTED, that the said Court of Directors, with the approbation of the said Board of Commissioners, shall and may, from time to time, make regulations for the division and distribution of the patronage and power of nomination of, and to the offices, command, and employments in the said territories, and in all or any of the presidencies thereof, among the said Governor-General in Council, Governor-General, Governors in Council, Governors, Commander-in-Chief, and other commanding officers respectively, appointed or to be appointed under this act.

Departure of Governor General, &c. for Europe, to be a resignation.

Resignation in India to be by deed.

LXXIX. AND BE IT ENACTED, that the return to *Europe* or the departure from *India*, with intent to return to *Europe*, of any Governor-General of *India*, Governor, Member of Council, or Commander-in-Chief, shall be deemed in law, a resignation and avoidance of his office or employment, and that no act or declaration of any Governor-General, or Governor, or Member of Council, other than as aforesaid, excepting a declaration in writing under hand and seal, delivered to the Secretary for the public department of the presidency wherein he shall be, in order to its being recorded, shall be deemed or held as a resignation or surrender of his said office; and that the salary and

other allowances of any such Governor-General or other officer respectively, shall cease from the day of such his departure, resignation, or surrender; and that if any such Governor-General or Member of Council of *India* shall leave the said territories, or if any Governor or other officer whatever, in the service of the said Company, shall leave the presidency to which he shall belong, other than in the known actual service of the said Company, the salary and allowances appertaining to his office, shall not be paid or payable during his absence to any agent or other person for his use; and in the event of his not returning, or of his coming to *Europe*, his salary and allowances shall be deemed to have ceased on the day of his leaving the said territories, or the presidency to which he may have belonged; provided that it shall be lawful for the said Company to make such payment, as is now by law permitted to be made to the representatives of their officers or servants who having left their stations, intending to return thereto, shall die during their absence.

Salary to cease on departure or resignation.

As to representatives of such officers dying during absence.

LXXX. AND BE IT ENACTED, that every wilful disobeying and every wilful omitting, forbearing, or neglecting to execute the orders or instructions of the said Court of Directors by any Governor-General of *India*, Governor, Member of Council, or Commander-in-Chief, or by any other officers or servants of the said Company, unless in cases of necessity (the burthen of the proof of which necessity shall be on the person so disobeying or omitting, forbearing, or neglecting, to execute such orders or instructions as aforesaid;) and every wilful breach of the trust and duty of any office or employment by any such Governor-General, Governor, Member of Council, or Commander-in-Chief, or any of the officers or servants of the said Company, shall be deemed and taken to be a misdemeanor at law, and shall or may be proceeded against, and punished as such by virtue of this act.

Disobedience of orders and breach of trust by Governor General &c and other officers or servants of the Company in India, misdemeanor.

LXXXI. AND BE IT ENACTED, that it shall be lawful for any natural-born subjects of his Majesty, to proceed by sea to any port or place having a Custom-House establishment within the said territories, and to reside thereat, or

Authority for His Majesty's subjects to reside in certain

parts of India without licence.

to proceed to and reside in or pass through any part of such of the said territories as were under the Government of the said Company, on the first day of *January*, one thousand eight hundred, and in any part of the countries ceded by the Nabob of the *Carnatic*, of the province of *Cuttack*, and of the settlements of *Singapore* and *Malacca*, without any licence whatever; provided, that all subjects of his Majesty, not natives of the said territories shall, on their arrival in any part of the said territories from any port or place not within the said territories, make known in writing their names, places of destination, and objects of pursuit in *India*, to the chief officer of the Customs or other officer authorised for that purpose, at such port or place as aforesaid.

Subjects of his Majesty not to reside in other parts of India without licence.

LXXXII. PROVIDED ALWAYS, AND BE IT ENACTED, that it shall not be lawful for any subject of his Majesty, except the servants of the said Company, and others now lawfully authorized, to reside in the said territories, to enter the same by land, or to proceed to or reside in any place or places in such parts of the said territories, as are not hereinbefore in that behalf mentioned, without licence from the said Board of Commissioners, or the said Court of Directors, or the said Governor-General in Council, or a Governor or Governor in Council of any of the said presidencies for that purpose first obtained: Provided alawys, that no licence given to any natural-born subject of his Majesty to reside in parts of the territories not open to all such subjects, shall be determined or revoked unless in accordance with the terms of some express clause of revokation or determination in such licence contained.

The Governor General in Council, with previous consent of Directors, may declare other places open.

LXXXIII. PROVIDED ALWAYS AND BE IT ENACTED, that it shall be lawful for the said Governor-General in Council, with the previous consent and approbation of the said Court of Directors, for that purpose obtained, to declare any place or places whatever within the said territories open to all his Majesty's natural-born subjects, and it shall be thenceforth lawful for any of his Majesty's natural-born subjects to proceed to, or reside in or pass through any place or places declared open without any licence whatever.

LXXXIV. AND BE IT ENACTED, that the said Governor-General in Council shall, and he is hereby required, as soon as conveniently may be, to make laws or regulations providing for the prevention or punishment of the illicit entrance into or residence in the said territories, of persons not authorized to enter or reside therein.

Laws against illicit residence to be made.

LXXXV. "AND WHEREAS, the removal of restriction "on the intercourse of *Europeans* with the said territories "will render it necessary to provide against any mischiefs "or dangers that may arise therefrom:" Be it therefore enacted, that the said Governor-General in Council shall, and he is hereby required, by laws or regulations, to provide with all convenient speed, for the protection of the natives of the said territories, from insult and outrage in their persons, religions or opinions.

Laws and regulations to be made for protection of natives.

LXXXVI. AND BE IT ENACTED, that it shall be lawful for any natural-born subject of his Majesty, authorized to reside in the said territories, to acquire and hold lands, or any right, interest, or profit in or out of lands, for any term of years, in such part or parts of the said territories, as he shall be so authorized to reside in; Provided always, that nothing herein contained shall be taken to prevent the said Governor-General in Council, from enabling, by any laws or regulations or otherwise, any subjects of his Majesty, to acquire or hold any lands or rights, interests, or profits in or out of lands, in any part of the said territories, and for any estates or terms whatever.

British subjects may acquire & hold land within the Indian territories.

LXXXVII. AND BE IT ENACTED, that no native of the said territories, nor any natural-born subject of his Majesty, resident therein, shall, by reason only of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office, or employment, under the said Company.

No disabilities from holding office in respect of religion, colour or place of birth.

LXXXVIII. AND BE IT FURTHER ENACTED, that the said Governor-General in Council shall, and he is hereby required, forthwith to take into consideration, the means of mitigating the state of slavery, and of ameliorating the condition of slaves, and of extinguishing slavery throughout

Slavery to be mitigated and abolished as soon as practicable.

the said territories, so soon as such extinction shall be practicable and safe, and from time to time, to prepare and transmit to the said Court of Directors, drafts of laws or regulations for the purpose aforesaid, and that in preparing such drafts due regard shall be had to the laws of marriage, and the rights and authorities of fathers and heads of families, and that such drafts shall forthwith, after receipt thereof, be taken in to consideration by the said Court of Directors, who shall, with all convenient speed, communicate to the said Governor-General in Council, their instructions on the drafts of the said laws and regulations, but no such laws and regulations shall be promulgated or put in force without the previous consent of the said Court; and the said Court shall, within fourteen days after the first meeting of Parliament in every year, lay before both Houses of Parliament, a report of the drafts of such rules and regulations, as shall have been received by them, and of their resolutions or proceedings thereon.

Respecting the inconvenient extent of the diocese of Calcutta.

LXXXIX. "And whereas, the present diocese of "the Bishoprick of *Calcutta* is of too great an extent for "the incumbent thereof, to perform efficiently all the duties "of the office without endangering his health and life, and "it is therefore expedient to diminish the labours of the "Bishop of the said diocese, and for that purpose to make "provision for assigning new limits to the diocese of the "said Bishop, and for founding and constituing two separate "and distinct Bishopricks; but, nevertheless, the Bishops "thereof to be subordinate and subject to the Bishop of "*Calcutta*, for the time being, and his successors, as their "metropolitan;" Be it therefore enacted, that in case it shall please his Majesty to erect, found, and constitute two Bishopricks, one to be styled the Bishoprick of *Madras*, and the other the Bishoprick of *Bombay*, and from time to time to nominate and appoint Bishops to such Bishopricks, under the style and title of Bishops of *Madras* and *Bombay* respectively, there shall be paid from and out of the revenues of the said territories, to such Bishops respectively, the sum of twenty-four thousand sicca rupees by the year.

If the King erects Bishopricks of Madras and Bombay, certain salaries to be paid to the Bishops.

XC. AND BE IT ENACTED, that the said salaries shall commence from the time at which such persons as shall be appointed to the said office of Bishop, shall take upon them the execution of their respective offices; and that such salaries shall be in lieu of all fees of office, perquisites, emoluments, or advantages whatsoever; and that no fees of office, perquisites, emoluments, or advantages whatsoever shall be accepted, received or taken by such Bishop or either of them in any manner or on any account or pretence whatsoever, other than the salaries aforesaid; and that such Bishops respectively shall be entitled to such salaries so long as they shall respectively exercise the functions of their several offices in the *British* territories aforesaid.

Such salaries to commence from time of taking office, and to be in lieu of all fees, &c.

XCI. AND BE IT ENACTED, that the said Court of Directors shall, and they are required to pay to the Bishops, so from time to time to be appointed to the said Bishopricks of *Madras* and *Bombay*, in case they shall be resident in the United Kingdom at the time of their respective appointments, the sum of five hundred pounds each, for the purpose of defraying the expences of their equipments and voyage.

Passage money for each such Bishop.

XCII. PROVIDED ALWAYS, AND BE IT ENACTED, that such Bishops shall not have or use any jurisdiction, or exercise any episcopal functions whatsoever, either in the said territories or elsewhere, but only such jurisdiction and functions as shall or may, from time to time, be limited to them respectively, by his Majesty by his royal letters patent, under the great seal of the said United Kingdom.

As to jurisdiction of such Bishop.

XCIII. AND BE IT ENACTED, that it shall and may be lawful for his Majesty, from time to time, if he shall think fit, by his royal letters patent, under the great seal of the said United Kingdom, to assign limits to the diocese of the Bishoprick of *Calcutta*, and to the dioceses of the said Bishopricks of *Madras* and *Bombay* respectively, and from time to time, to alter and vary the same limits respectively, as to his Majesty shall seem fit, and to grant to such Bishops respectively within the limits of their respective dioceses, the exercise of episcopal functions, and

The King empowered by letters patent to limit jurisdiction and functions.

of such ecclesiastical jurisdiction as his Majesty shall think necessary for the superintendence and good government of the Ministers of the United Church of *England* and *Ireland* therein.

The Bishop of Calcutta to be metropolitan in India.

XCIV. PROVIDED ALWAYS, AND BE IT ENACTED, that the Bishop of *Calcutta*, for the time being, shall be deemed and taken to be the metropolitan Bishop in *India*, and as such shall have, enjoy, and exercise all such ecclesiastical jurisdiction and episcopal functions, for the purposes aforesaid, as his Majesty shall, by his royal letters patent, under the great seal of the said United Kingdom, think necessary to direct,—subject, nevertheless, to the general superintendence and revision of the Archbishop of *Canterbury* for the time being; and that the Bishops of *Madras* and *Bombay* for the time being respectively, shall be subject to the Bishop of *Calcutta* for the time being, as such metropolitan, and shall, at the time of their respective appointments to such Bishopricks, or at the time of their respective consecrations as Bishops take an oath of obedience to the said Bishop of *Calcutta*, in such manner, as his Majesty, by his said royal letters patent, shall be pleased to direct.

Warrants for bills on letters patent appointing Bishops to be countersigned by the President of Board.

XCV. AND BE IT ENACTED, that when and as often as it shall please his Majesty to issue any letters patent, respecting the Bishopricks of *Calcutta*, *Madras*, and *Bombay*, or for the nomination or appointment of any person thereto respectively, the warrant for the bill in every such case shall be countersigned by the President of the Board of Commissioners for the Affairs of *India*, and by no other person.

The King may grant certain pensions to Bishops of Madras or Bombay.

XCVI. AND BE IT ENACTED, that it shall and may be lawful for his Majesty, his heirs, and successors, by warrant under his royal sign manual, countersigned by the Chanceller of the Exchequer for the time being, to grant to any such Bishop of *Madras* or *Bombay* respectively, who shall have exercised in their *British* territories aforesaid, for fifteen years, the office of such Bishop, a pension not exceeding eight hundred pounds per annum, to be paid quarterly by the said Company.

XCVII. AND BE IT ENACTED, that in all cases when it shall happen, the said person nominated and appointed to be Bishop of either of the said Bishopricks of *Madras* or *Bombay*, shall depart this life within six calendar months next, after the day when he shall have arrived in *India* for the purpose of taking upon him the office of such Bishop, there shall be payable, out of the territorial revenues, from which the salary of such Bishop so dying shall be payable, to the legal personal representatives of such Bishop, such sum or sums of money as shall, together with the sum or sums paid to or drawn by such Bishop in respect of his salary, make up the full amount of one year's salary; and when and so often as it shall happen, that any such Bishop shall depart this life while in possession of such office, and after the expiration of six calendar months from the time of his arrival in *India* for the purpose of taking upon him such office, then and in every such case there shall be payable, out of the territorial revenues from which the salary of the said Bishop so dying, shall be payable to his legal personal representatives, over and above what may have been due to him at the time of his death, a sum equal to the full amount of the salary of such Bishop, for six calendar months.

Respecting salary of a Bishop of Madras or Bombay dying within six months after arrival;

or after six months holding office in India.

XCVIII. AND BE IT ENACTED, that if it shall happen, that either of the Bishops of *Madras* or *Bombay* shall be translated to the Bishoprick of *Calcutta*, the period of residence of such person as Bishop of *Madras* or *Bombay* shall be accounted for and taken as a residence as Bishop of *Calcutta*; and if any person now an Archdeacon in the said territories, shall be appointed Bishop of *Madras* or *Bombay*, the period of his residence in *India* as such Archdeacon shall, for all the purposes of this act, be accounted for and taken as a residence as such Bishop.

As to residence of Bishop of Madras or Bombay, if translated to Calcutta.

XCIX. PROVIDED ALSO, AND BE IT ENACTED, that if any person, under the degree of a Bishop, shall be appointed to either of the Bishopricks of *Calcutta*, *Madras* or *Bombay*, who at the time of such appointment shall be resident in *India*, then and in such case it shall and may be lawful for the Archbishop of *Canterbury*, when and as he shall be required so to do by his Majesty, by his royal

As to consecration of any person under the degree of a Bishop, if resident in India, appointed to a Bishoprick.

letters patent, under the great seal of the said United Kingdom, to issue a commission under his hand and seal, to be directed to the two remaining Bishops, authorising and charging them to perform all such requisite ceremonies for the consecration of the person so to be appointed to the degree and office of a Bishop.

Provision for expence of visitations.

C. AND BE IT ENACTED, that the expences of visitations to be made, from time to time, by the said Bishops of *Madras* and *Bombay* respectively, shall be paid by the said Company, out of the revenues of the said territories; provided, that no greater sum on account of such visitations be at any time issued than shall from time to time be defined and settled by the Court of Directors of the said Company, with the approbation of the Commissioners for the affairs of *India*.

No Archdeacon in India to have a salary exceeding 3000 sicca rupees in respect of Archdeaconry.

CI. AND BE IT ENACTED, that no Archdeacon hereafter to be appointed for the Archdeaconry of the presidency of *Fort William* in *Bengal*, or the Archdeaconry of the presidency of *Fort Saint George*, or the Archdeaconry of the presidency and island of *Bombay*, shall receive in respect of his Archdeaconry any salary exceeding three thousand sicca rupees *per annum*. Provided always, that the whole expence incurred in respect of the said Bishops and Archdeacons shall not exceed one hundred and twenty thousand sicca rupees *per annum*.

Two chaplains of the church of Scotland to be on the establishment of each presidency.

CII. AND BE IT ENACTED, that of the establishment of chaplains maintained by the said Company, at each of the presidencies of the said territories, two chaplains shall always be Ministers of the Church of *Scotland*, and shall have, and enjoy, from the said Company, such salary as shall, from time to time, be allotted to the military chaplains at the several presidencies: Provided always, that the Ministers of the Church of *Scotland*, to be appointed chaplains at the said presidencies as aforesaid, shall be ordained and inducted by the Presbytery of *Edinburgh*, according to the forms and solemnities used in the Church of *Scotland*, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of *Edinburgh*, whose judgments shall be subject to

dissent, protest, and appeal to the provincial Synod of *Lothian* and *Tweeddale*, and to the general assembly of the Church of *Scotland:* Provided always, that nothing herein contained, shall be so construed as to prevent the Governor-General in Council, from granting, from time to time, with the sanction of the Court of Directors and of the Commissioners for the affairs of *India*, to any sect, persuasion, or community of christians, not being of the United Church of *England* and *Ireland*, or of the Church of *Scotland*, such sums of money as may be expedient for the purpose of instruction or for the maintenance of places of worship.

The Governor General in Council annually to make a prospective estimate of the number of vacancies in Indian civil establishments.

CIII. "AND WHEREAS, it is expedient to provide for "the due qualification of persons to be employed in the "civil service of the said Company in the said territories;" Be it therefore enacted, that the said Governor-General of *India* in Council shall, as soon as may be, after the first day of *January*, in every year, make and transmit to the said Court of Directors, a prospective estimate of the number of persons who, in the opinion of the said Governor-General in Council, will be necessary, in addition to those already in *India* or likely to return from *Europe*, to supply the expected vacancies in the civil establishment of the respective governments in *India*, in such one of the subsequent years as shall be fixed in the rules and regulations hereinafter mentioned; and it shall be lawful for the said Board of Commissioners to reduce such estimate, so that the reasons for such reduction be given to the said Court of Directors; and in the month of *June* in every year, if the said estimate shall have been then received by the said Board, and if not, then within one month after such estimate shall have been received, the said Board of Commissioners shall certify to the said Court of Directors, what number of persons shall be nominated as candidates for admission, and what number of students shall be admitted to the college of the said Company at *Haileybury*, in the then current year, but so that at least four such candidates, no one of whom shall be under the age of seventeen or above the age of twenty years, be nominated, and no more than one student

Board to certify what number of persons shall be nominated candidates for admission to Haileybury College and what number shall be admitted students.

admitted for every such expected vacancy in the said civil establishments, according to such estimate or reduced estimate as aforesaid; and it shall be lawful for the said Court of Directors to nominate such a number of candidates for admission to the said college as shall be mentioned in the certificate of the said Board; and if the said Court of Directors shall not, within one month after the receipt of such certificate, nominate the whole number mentioned therein, it shall be lawful for the said Board of Commissioners to nominate so many as shall be necessary to supply the deficiency.

Additional students to be admitted to fill up vacancies.

CIV. AND BE IT ENACTED, that when and so often as any vacancy shall happen in the number of students in the said college by death, explusion, or resignation, it shall be lawful for the said Board of Commissioners, to add in respect of every such vacancy, one to the number of students to be admitted, and four to the number of candidates for admission to be nominated by the said Court, in the following year.

The candidates for admission to be subjected to an examination and classed.

CV. AND BE IT ENACTED, that the said candidates for admission to the said college, shall be subject to an examination in such branches of knowledge, and by such examiners as the said Board shall direct, and shall be classed in a list to be prepared by the examiners, and the candidates whose names shall stand highest in such list, shall be admitted by the said Court as students in the said college, until the number to be admitted for that year, according to the certificate of the said Board, be supplied.

The Board to frame rules for the government of the College and the examination and qualification of candidates.

CVI. AND BE IT FURTHER ENACTED, that it shall be lawful for the said Board of Commissioners, and they are hereby required forthwith, after the passing of this act, to form such rules, regulations, and provisions for the guidance of the said Governor-General in Council in the formation of the estimate hereinbefore mentioned, and for the good government of the said college, as in their judgment shall appear best adapted to secure fit candidates for admission into the same, and for the examination and qualifications of such candidates, and of the students of the said college, after they shall have completed their

residence there, and for the appointment and remuneration of proper examiners; and such plan, rules, and regulations, and provisions respectively, shall be submitted to his Majesty in Council for his revision and approbation; and when the same shall have been so revised and approved by his Majesty in Council, the same shall not afterwards be altered or replealed, except by the said Board of Commissioners, with the approbation of his Majesty in Council.

Students to be examined and classed.

CVII. AND BE IT ENACTED, that at the expiration of such time as shall be fixed by such rules, regulations, and provisions, made as aforesaid, so many of the said students as shall have a certificate from the said college, of good conduct during the term of their residence therein, shall be subjected to an examination in the studies prosecuted in the said college, and so many of the said students as shall appear duly qualified, shall be classed, according to merit, in a list to be prepared by the examiners, and shall be nominated to supply the vacanies in the civil establishments in *India*, and have seniority therein according to their priority in the said list; and if there shall be, at the same time, vacancies in the establishments of more than one of the said presidencies, the students on the said list shall, according to such priority, have the right of electing, to which of the said establishments they will be appointed.

The students to supply the vacancies in the service according to priority on the list, and to choose their presidencies.

Sanction of appointment of professors.

CVIII. AND BE IT ENACTED, that no appointment of any professer or teacher at the said college shall be valid or effectual until the same shall have been approved by the Board of Commissioners

All powers of Court of Directors to be subject to the control of the Board except patronage.

CIX. AND BE IT ENACTED, that every power, authority, and function by this or any other act or acts given to and vested in the said Court of Directors, shall be deemed and taken to be subject to such control of the said Board of Commissioners, as in this act is mentioned, unless there shall be something in the enactments conferring such powers, authorities, or functions inconsistent with such construction, and except as to any patronage or right of appointing to office vested in or reserved to the said Court.

Board of Control prohibited from directing the grant of allowances.

CX. PROVIDED ALWAYS, AND BE IT ENACTED, that nothing herein contained shall be construed to enable the said Board of Commissioners to give or cause to be given directions, ordering, or authorising the payment of any extraordinary allowance or gratuity, or the increase of any established salary, allowance, or emolument, unless in the cases and subject to the provisions in and subject to which such directions may now be given by the said Board, or to increase the sum now payable by the said Company on account of the said Board, except only by such salaries or allowances as shall be payable to the officers to be appointed as hereinbefore is mentioned, to attend upon the said Board during the winding up of the commercial business of the said Company.

The Company to be called the East India Company.

CXI. AND BE IT ENACTED, that whenever in this act, or in any act hereafter to be passed, the term *East India* Company is or shall be used, it shall be held to apply to the United Company of Merchants of *England* trading to the *East Indies*, and that the said United Company of Merchants of *England* trading to the *East Indies* may, in all suits, proceedings, and transactions whatsoever, after the passing of this act, be called by the name of the *East India* Company.

Saint Helena vested in the Crown.

CXII. AND BE IT ENACTED, that the island of *Saint Helena*, and all forts, factories, public edifices, and hereditaments whatsoever in the said island, and all stores and property thereon, fit or used for the service of the Government thereof, shall be vested in his Majesty, his heirs and successors, and the said island shall be governed by such orders as His Majesty in Council shall, from time to time, issue in that behalf.

Servants of the Company in China and St. Helena to be eligible to offices in any presidency.

CXIII. AND BE IT FURTHER ENACTED, that every supercargo and other civil servants of the said Company, now employed by the said Company, in the factory at *Canton*, or in the island of *Saint Helena*, shall be capable of taking and holding any office in any presidency or establishment of the said territories which he would have been capable of taking and holding, if he had been a civil servant in such

presidency, or on such establishment during the same time as he shall have been in the service of the said Company.

CXIV. AND BE IT ENACTED, that from and after the passing of this act, all enactments and provisions directing the said Company, to provide for keeping a stock of tea, shall be repealed.

Repeal of enactments for keeping a stock of tea.

CXV. AND BE IT ENACTED, that it shall be lawful for any Court of justice established by his Majesty's charters in the said territories, to approve, admit, and enrol persons as Barristers, Advocates, and Attornies in such Court without any licence from the said Company, any thing in any such charter contained to the contrary notwithstanding. Provided always, that the being entitled to practise as an advocate in the principal Courts of *Scotland*, is and shall be deemed and taken to be a qualification for admission as an advocate in any Court in *India*, equal to that of having been called to the bar in *England* or *Ireland*.

King's Courts authorized to admit advocates without the Company's licence.

CXVI. AND BE IT FURTHER ENACTED, that the Court of Directors of the said Company shall, within the first fourteen sitting days next after the first day of *May* in every year, lay before both Houses of Parliament, an account, made up according to the latest advices, which shall have been received, of the annual produce of the revenues of the said territories in *India*, distinguishing the same and the respective heads thereof, at each of their several presidencies or settlements, and of all their annual receipts and disbursements at home and abroad, distinguishing the same under the respective heads thereof, together with the latest estimate of the same, and also the amount of their debts, with the rates of interest they respectively carry, and the annual amount of such interest, the state of their effects and credits at each presidency or settlement, and in *England* or elsewhere, according to the latest advices which shall have been received thereof, and also a list of their several establishments, and the salaries and allowances payable by the said Court of Directors in respect thereof, and the said Court of Directors, under the direction and control of the said Board of Commissioners, shall forthwith prepare forms of the said accounts and estimates in

Accounts to be annually laid before Parliament.

such manner as to exhibit a complete and accurate view of the financial affairs of the said Company; and if any new or increased salaries, establishments, or pensions shall have been granted or created within any year, the particulars thereof shall be specially stated and explained at the foot of the account of the said year.

Commencement of Act.

CXVII. AND BE IT ENACTED, that this act shall commence and take effect from and after the passing thereof, so far as to authorize the appointment, or prospective or provisional appointment of the Governor-General of *India*, Governors, Members of Council, or other officers, under the provisions herein contained, and so far as hereinbefore in that behalf mentioned, and as to all other matters and things, from and after the twenty-second day of *April* next.

An Act *to amend the law relating to* Insolvent "Debtors in India."

[14*th August* 1834.]

Recital of former acts. 9. G. 4, c. 73, and 2 W. 4, c. 43.

"WHEREAS an Act was passed in the ninth year "of the reign of his late Majesty, King *George* the "Fourth, intituled *An Act to provide for the Relief of* "*Insolvent Debtors in the* East Indies, *until the first* "*day of* March, *one thousand eight hundred and thir-* "*ty-three* ;" And by another act passed in the second "year of the reign of his present Majesty, King *William* "the Fourth, the said act was continued in force until "the first day of *March*, one thousand eight hundred and "thirty-six ;" And, whereas, in and by the said Act to "provide for the Relief of Insolvent Debtors in the *East* "*Indies*, certain provisions were enacted as to a com- "mission of bankruptcy issuing against any such insolvent "debtor as therein mentioned, and as to the proceedings "consequent thereon ; and, amongst other things, it was "enacted, that a certificate obtained under such commis- "sion as therein provided, should have the same force "and effect in all places situate without the limits of the "*East India* Company's Charter, as if the same had been "duly signed in the usual way, after such bankrupt had "duly surrendered and passed his last examination ; and, "it was also, by the said act, amongst other things pro- "vided and enacted, that whenever it shall be made to "appear to the satisfaction of any Court for the relief "of Insolvent Debtors, upon the application of any in- "solvent, his assignee or assignees, or any of his or her "creditors, that the estate of such insolvent debtor, which

" shall have come to the hands of the assignee or assig-
" nees, shall have produced sufficient to pay and dis-
" charge three-fourths of the amount of the debts which
" shall have been established in such Court, or that cre-
" ditors to the amount of more than one-half in number
" and value of the debts, which shall have been so esta-
" blished, shall signify their consent in writing thereto, it
" shall be lawful for such Court to inquire into the con-
" duct of the said insolvent, and if it shall appear to such
" Court, that the said insolvent has acted fairly and
" honestly towards his or her creditors, such Court shall
" be fully authorized and empowered thereupon to order
" that the said insolvent shall be for ever discharged from
" all liability whatsoever for or in respect of such debts,
" so established, as aforesaid; And such Court shall, in
" the order to be drawn up, specify and set forth the
" names of such creditors; and after any such order
" shall have been so made, no further proceedings shall
" be had in the matter of the petition before the Court,
" unless upon appeal made to the Supreme Court of Ju-
" dicature of the presidency, where such Court for the
" relief of insolvent debtors shall be holden as thereby
" authorized; and, it was by the said recited act also
" provided, that no such order as last aforesaid, shall pre-
" vent any creditor who shall not have been resident
" within the limits of the charter of the said United
" Company, at any time between the filing of such peti-
" tion and the making of such order as last mentioned,
" and who shall not have taken part in any of the pro-
" ceedings under the said petition, from bringing any
" suit or action in the *East Indies*, for the purpose
" of obtaining execution against the goods, estate, or
" effects of such insolvent, for any unsatisfied claim of
" such creditor, nor from bringing any suit or action
" for such claim in any Court of the United King-
" dom of *Great Britain* and *Ireland*, or elsewhere,
" without the limits of the said United Company's
" charter, against such insolvent, in the same manner and
" with the like consequences and effects as if such order
" as last mentioned had not been made;" And, whereas, it
" is expedient to extend and add to the provisions of the

"said acts, so as to give to insolvent debtors, being "traders, who shall have acted fairly and honestly towards "their creditors, an additional and more complete dis- "charge, and also to render more effectual the means of "obtaining such discharge, and at the same time to pre- "serve to such insolvent debtors such relief as is already "afforded by the said recited acts;" And whereas, under "the provisions of the act passed in the first and second "years of his present Majesty, King *William* the Fourth, "intituled *An Act to establish a Court in Bankruptcy,* "a fiat is issued in bankruptcy in lieu of a commission of "bankrupt in every case where the Lord Chancellor, by "virtue of any former act had heretofore power to issue "a commission of bankrupt;" Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that any person who now is, or who shall hereafter become, an insolvent debtor, within the intent and meaning of the said act, of the ninth year of the reign of his Majesty King *George* the Fourth, either upon petition filed, or by adjudication on an act of insolvency as therein provided, and who, at the time of such petition being filed or adjudication made as aforesaid, shall have been or shall be a person who, by an act passed in the sixth year of the reign of his late Majesty, intituled *an Act to amend the laws relating to Bankrupts,* or by any act hereafter to be passed, would be deemed a trader liable to become bankrupt, shall be at liberty, at any time not earlier than three months from the making of such assignment as in the said act, intituled *An Act for the Relief of Insolvent Debtors in the East Indies,* directed, or from any such adjudication of insolvency as therein mentioned, (as the case may be), to apply by petition for his discharge to any one of the said Courts in the *East Indies* for the relief of insolvent debtors in the said last mentioned act mentioned, as shall have already jurisdiction over the matter of his insolvency; and the principal officer of such Court shall cause a notice of such petition to be forthwith inserted in the gazette of the presidency within which such Court

Recites the expediency of extending the provisions of the said acts;

Recital of 1 & 2. W. 4. c. 56.

Enacts that insolvents within intent and meaning of 9 Geo 4, and a trader under 6 G. 4 c. 16, shall be at liberty to apply by petition *for discharge.*

Within what period.

Notice to be inserted in presidency gazette.

shall be holden; and the Chief Secretary of the Government of such presidency shall, without delay, transmit to the Court of Directors of the said United Company, by different ships, two at least of every such gazette which shall contain such notice as aforesaid, who shall, without delay, cause such notice to be inserted in the *London Gazette;* and all creditors of the said insolvent, either alone or as a partner with any other person or persons, and either within the limits of the said charter of the said United Company, or elsewhere, who shall not, within fourteen calendar months from the filing of such petition for a discharge as aforesaid, have given notice to the said Court of his dissent from such insolvent having his discharge, shall be taken to have assented thereto; and thereupon, and at expiration of the said fourteen calendar months from filing of such petition for discharge as aforesaid, if it shall appear to such Court that the said insolvent has acted fairly and honestly towards his creditors, and unless creditors to the amount of one-sixth in number and value of the debts that shall have been established in such Court, shall have given notice of their dissent as aforesaid, or unless a fiat in bankruptcy (not being a fiat issued under the provisions of the said recited acts, to provide for the relief of insolvent debtors in the *East Indies,*) shall have been sued out in *England* against such insolvent within the time hereinafter provided, such Court shall be authorized and empowered to order the discharge of the said insolvent from liability for debts, claims, and demands of and against such insolvent; and such order shall operate (save as hereinafter provided) as a release and discharge from all debts, claims, and demands for which such insolvent was liable at the time of his petition for relief being filed or of any such act of insolvency committed as aforesaid, (as the case may be), and whether within the limits of the charter of the said United Company or elsewhere, and whether such debts, claims and demands shall or shall not have been established in such Court as aforesaid: Provided, nevertheless, that such order shall not operate as a release or discharge of any person who was partner with such insolvent, or jointly bound or liable with him.

All creditors taken to assent to petition unless notice of dissent given within fourteen months of the filing of petition.

Insolvent to be discharged unless creditors to amount of one sixth in number and value of debts established give notice of dissent or unless fiat issued.

Effect of order of discharge,

Order of *discharge* not to operate as release of partner, &c.

II. PROVIDED ALWAYS, AND BE IT FURTHER ENACTED, that in case any fiat in bankruptcy shall be issued in *England* against any such insolvent trader as aforesaid, under the provisions of the said act, intituled *an Act to provide for the relief of Insolvent Debtors in the* East Indies, or under the provisions of any other act passed, or to be hereafter passed, respecting insolvent debtors in the *East Indies*, then and in such case such order for discharge as aforesaid, shall not operate as a discharge of the debt, claim, and demand of any creditor, who shall not have been resident within the limits of the charter of the said United Company, at any time between the filing of such petition and the making of such order as last mentioned, nor shall any such creditor be debarred from bringing any suit or action for such debt, claim, or demand, in any Court of the United kingdom of *Great Britain* and *Ireland* or elsewhere, without the limits of the said United Company's charter, against such insolvent, in the same manner and with the like consequences and effects as if such order as last mentioned, had not been made.

If fiat in bankruptcy issued in England discharge not to operate as discharge of debt, &c of any not resident within limits of charter between filing petition and order for discharge;

Or to debar creditors from bringing suits &c without limits.

III. PROVIDED, NEVERTHELESS, AND BE IT FURTHER ENACTED, that in such last mentioned case, upon any application made to the Commissioner acting in such fiat as aforesaid, to sign the certificate of such insolvent, and after the same shall have been signed by the requisite number of creditors, under the provisions of the said act, intituled *an Act to provide for the relief of Insolvent Debtors in the* East Indies, or any other act passed or hereafter to be passed, respecting insolvent debtors in the *East Indies*, then if it shall be made to appear to such Commissioner, that such order for a discharge has been made by the Court in the *East Indies* as aforesaid, and if such Cmmissioner shall sign such certificate, he shall also certify, in writing, upon such certificate, that such insolvent has obtained such order for discharge in the *East Indies* as aforesaid, and thereupon such certificate shall have the same force and effect, as well within as without the limits aforesaid, as a certificate duly obtained under the said act of the sixth year of the reign of his Majesty, King *George*

Commissioner acting in fiat and signing certificate, and certifying order for discharge in East Indies, certificate to have effect within and without limits aforesaid.

the Fourth, intituled *An Act to amend the laws relating to Bankrupts*, or in any other act passed, or to be hereafter passed respecting bankrupts.

If insolvents be arrested or sued after such order how to proceed.

IV. AND BE IT ENACTED, that any such insolvent trader who shall not be made a bankrupt under the provisions of the said act for the relief of insolvent debtors in the *East Indies*, or of any other act passed or hereafter to be passed respecting insolvent debtors in the *East Indies*, if he shall, after such order for his dicharge, shall have been made as aforesaid, be arrested or have any action brought against him for any debt, claim, or demand, for which he was so liable as aforesaid, either within the limits of the charter of the said United Company, or elsewhere, shall be discharged upon common bail, and may plead in general, that the cause of action accrued before he became insolvent, and may give this act and the special matter in evidence; and such orders as aforesaid, duly sealed with the seal of the said Court, shall be sufficient evidence in all Courts and places whatsoever, of all the proceedings precedent to such order being made, and of the same being duly obtained; and, if any such insolvent trader shall be taken in execution or detained in prison for such debt, claim, or demand, where judgment has been obtained before such order of the Court for his discharge as aforesaid, it shall be lawful for any judge of the Court, wherein such judgment has been obtained, on such insolvent producing such order as aforesaid, to order any officer who shall have such insolvent in custody, by virtue of such execution, to discharge such insolvent, without exacting any fee, and such officer shall be hereby indemnified for so doing; and any such insolvent trader, who shall be a bankrupt under the provisions of the said last mentioned act, and who shall be arrested within the limits of the charter of the said Company, shall be so discharged, and may so plead, and shall have otherwise such relief, within the said limits, as hereinbefore mentioned; and if he shall also obtain such certificate as hereinbefore provided, he may be at liberty to avail himself either of such certificate, of such order of discharge as aforesaid, for the purpose of his discharge within the limits aforesaid.

V. AND BE IT FURTHER ENACTED, that in case any fiat in bankruptcy, (other than a fiat under the provisions of the said act, intituled *an Act to provide for the relief of insolvent debtors in the* East Indies, or any other act relating to the insolvent debtors in the *East Indies,*) be issued against any such insolvent trader within the period of eight calendar months, from the time of such petition for relief being filed, or of such adjudication of insolvency being made, as the case may be, and such insolvent trader shall be duly adjudged a bankrupt under such fiat, then and in such case such Court as aforesaid shall not be authorized and empowered to make any such order for discharge as aforesaid.

If a fiat in Bankruptcy other than under Indian insolvent acts, issue within eight months after petition for relief, and insolvent trader adjudged bankrupt, the Court to make no order for discharge,

VI. AND BE IT FURTHER ENACTED, that after the expiration of such eight calendar months as aforesaid, no fiat shall issue against any such insolvent, upon any petitoining creditor's debt due before the filing of such petition for relief, or such adjudication of insolvency (as the case may be); and in case any fiat shall issue against such insolvent trader as aforesaid, upon a petitioning creditor's debt incurred subsequently to such filing of the petition for relief, or to such adjudication of insolvency as aforesaid, such fiat shall not in any manner affect, invalidate, or interfere with the proceedings under the insolvency previously existing in the *East Indies;* nor shall the assignees under such fiat acquire any right or title to take possession of demand, sue for, or recover any property or interest, real or personal, wheresoever situated, which belonged to such insolvent at the time of such petition for relief being filed, or of such adjudication of insolvency as aforesaid, but the assignee or assigneees appointed by such Court for the relief of insolvent debtors, shall have the sole and exclusive right and title thereto; and all debts, claims, and demands, due and payable to such insolvent, at the time of such petition for relief being filed, or of such adjudication of insolvency as aforesaid, shall be established under such insolvency, and shall not be proveable under such last mentioned fiat.

But no fiat to issue against such insolvent trader, after such eight months upon any petitioning creditor's debt due before filing petition, or adjudication of insolvency.

If fiat issue upon debt incurred subsequently, same not to affect proceedings under insolvency previously existing in India.

Assignee under fiat to have no title;

Assignee under insolvent Courts in India to have sole title to estate wherever situate.

VII. "AND WHEREAS, by the said recited act of the "ninth year of the reign of his late Majesty, King *George*

Schedules of insolvent's estates

filed in Courts in India to be transmitted to Court of Directors in England, and to be open to inspection of creditors.

"the Fourth, it is enacted, that all such insolvent debtors as "therein mentioned, shall, within the time also therein mentioned, deliver into the Court, a schedule containing a full "and true account of their debts, estates and effects, as "therein mentioned, and which schedule is thereby directed to be forthwith filed in the said Court; And, whereas, it is expedient, that the creditors of such insolvent "debtors residing out of the limits of the said Company's "charter, should have the means of inspecting such schedule with equal facility with creditors of such insolvent "debtors, residing within the limits of the said charter;" Be it therefore further enacted, that the principal officer of the said respective Courts for the relief of insolvent debtors shall, without delay, transmit to the Court of Directors of the said Company, by different ships, two or more copies of each such schedule, and the said Court shall retain the same, and permit any person or persons, being a creditor or creditors of any such insolvent debtor, to inspect and examine, at all seasonable times, such schedule, and shall, upon the request and at the reasonable costs and charges for any such creditor or creditors, (such costs and charges to be regulated by the said Court), provide for him or them a copy or copies of any such schedule.

STAT. 5 & 6 WILL. 4. CAP. 52.

"*An* Act *to authorize the Court of Directors* "*of the* East India *Company to suspend the ex-* "*ecution of the provisions of the act of the Third* "*and Fourth William the Fourth, chapter eighty-* "*five, so far as they relate to the creation of the Go-* "*vernment of Agra.*"

[31*st August* 1835.]

"WHEREAS, by an act of Parliament made and "passed in the fourth year of the reign of his present "Majesty, intituled "*an Act for effecting an arrange-* "*ment with the* East India *Company, and for the bet-* "*ter Government of his Majesty's Indian territories,* "*till the thirtieth day of April, one thousand eight* "*hundred and fifty-four,*" It is among other things "enacted, that the territories then subject to the Govern- "ment of the presidency of *Fort William in Bengal,* "shall be divided into two distinct presidencies, one of "such presidencies, in which shall be included *Fort* "*William* aforesaid, to be styled, *The Presidency of* "*Fort William in Bengal,* and the other of such presi- "dencies to be styled, *The Presidency of Agra*; And, "whereas, much difficulty has arisen in carrying such "enactment into effect, and the same would be attended "with a large increase of charge:" Be it therefore enacted, by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spritual and temporal, and Commons, in this present Parliament assembled, and by the authorty of the same, that it shall and may be lawful for the Court of Directors of the *East India* Company, under the direction and control of the Board of

Recites 3 & 4, W. 4. c. 85.

East India Company may suspend provisions of recited act as to the division of the territories into two presidencies.

Commissioners for the affairs of *India*, to suspend the execution of the provisions of the said in part recited act, so far as the same relate to the division of the said territories into two distinct presidencies, and to the measures consequent thereupon, for such time, and from time to time as the said Court of Directors, under the direction and control of the said Board of Commissioners, shall think fit.

Governor General, during such suspension may appoint a Lieutenant Governor of the North Western Provinces.

II. AND BE IT FURTHER ENACTED, that for and during such time as the execution of such provisions aforesaid shall be suspended by the authority aforesaid, it shall and may be lawful for the Governor General of *India* in Council, to appoint, from time to time, any servant of the *East India* Company, who shall have been ten years in their service in *India*, to the office of Lieutenant Governor of the North Western Provinces, now under the presidency of *Fort William* in *Bengal*, and from time to time, to declare and limit the extent of the territories so placed under such Lieutenant Governor, and the extent of the authority to be exercised by such Lieutenant Governor, as to the said Governor General in Council may seem fit.

"*An* Act *to continue until the first day of* "*March, one thousand eight hundred and thirty-* "*nine, and from thence to the end of the then next* "*Session of Parliament, the several acts relating* "*to Insolvent Debtors in India.*"

[20*th July* 1836.]

"WHEREAS, an act was passsed in the ninth year "of the reign of his late Majesty, King *George* the "Fourth, intituled *an Act to provide for the Relief* "*of Insolvent Debtors in the East Indies, until the* "*first day of March, one thousand eight hundred and* "*thirty-three;* And whereas a certain other act was "passed in the second year of the reign of his present "Majesty, intituled, *an Act to continue* until the first "day of March, one thousand eight hundred and *thirty-* "*six, an act of the ninth year of his late Ma-* "*jesty, for the Relief of Insolvent Debtors in* India, "whereby the said first mentioned act was continued "in force until the first day of March, one thousand eight "hundred and thirty-six; And, whereas a certain other "act was passed in the fifth year of the reign of his pre- "sent Majesty, intituled *an Act to amend the Law re-* "*lating to Insolvent Debtors in* India; And, whereas, "it is expedient, that the said first mentioned act, as "amended by the said last mentioned act, should be con- "tinued;" Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said acts shall be and the same are hereby

Recites 9, G. 4, c. 73.

2 W. 4. c. 43.

5 W. 4, c. 79.

Recited acts continued.

continued, until the first day of March, one thousand eight hundred and thirty-nine, and from thence until the end of the then next Sesssion of Parliament.

Acts and deeds done subsequent to the expiration of recited acts to be deemed valid.

II. "And whereas, it may have happened, that divers "acts have been done since the first day of March last, "pursuant to the provisions in the said recited acts con-"tained, and doubts may be entertained of the validity or "efficacy of such acts, or of some of them, and it is expe-"dient that such doubts should be removed;" Be it therefore enacted and declared, that all acts, deeds, matters and things whatsover, which shall have been made or done, on or subsequent to the said first day of March last, and which would have been valid and effectual if the said several acts had been then in force, are and shall be, and shall be held, adjudged, deemed, and taken to be, as valid and effectual to all intents and purposes as if the said recited acts had not expired, and this act had passed on the twenty-ninth day of February last.

Act may be amended or repealed during present session.

III. AND BE IT ENACTED, that this act may be amended, altered, or repealed, by any act or acts to be passed in the present Session of Parliament.

STAT. 2 & 3 VICT. CAP. 34.

"*An* ACT *to confirm certain* RULES AND ORDERS *of the* "SUPREME COURTS *of Judicature at* FORT WILLI-"AM *and* MADRAS; *and to empower the same Courts,* "*and the Supreme Court of Judicature of* BOMBAY, "*to make Rules and Orders concerning* PLEAD-"INGS."

[29*th July* 1839.

"WHEREAS the Supreme Court of Judicature at "*Fort William* in *Bengal,* on the fifteenth day of "*June,* one thousand eight hundred and thirty-seven, "and the Supreme Court of Judicature at *Madras,* on "the twenty-second day of *February,* one thousand "eight hundred and thirty-seven, made and passed cer-"tain rules and orders, whereby the modes of pleading in "the same Courts respectively were in some respects al-"tered; and doubts have arisen as to the powers of the "same Courts to make such alterations without the au-"thority of Parliament:" Be it therefore enacted, by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said rules and orders, so far as they altered the modes of pleading in the said Supreme Courts, at *Fort William* and *Madras* respectively, shall be deemed and taken, to all intents, to have been lawfully made, and to have had and still to have the force of law.

The rules for altering the mode of pleading in the Supreme Courts at *Fort William* and *Madras* deemed to have been lawfully made.

Supreme Courts at *Bombay*, *Fort William*, and *Madras* may pass rules or altering the modes of pleading.

II. "AND WHEREAS it is expedient to provide for giving validity to any rules or orders which may be made "by the Supreme Court of Judicature at *Bombay*, for "altering the modes of pleading therein, and also to any "other rules or orders which may hereafter be made by the "said Supreme Courts of *Fort William* and *Madras*, "or either of them, respecting the modes of pleading in "the same Courts respectively;" Be it therefore enacted, that the said Supreme Court of *Bombay* shall and may, by any rules or orders to be from time to time passed by the said Court, make such alterations, and the said Supreme Courts of *Fort William* and *Madras* shall and may, by any other rules or orders to be from time to time passed by the said Courts respectively, make such further alterations in the mode of pleading in the said Courts respectively, or in the mode of entering and transcribing pleadings, judgments, and other proceedings in actions at law or suits in Equity, or any Civil or Ecclesiastical causes, and such regulations as to the payment of costs, and otherwise for carrying into effect any such alterations, as to the said Courts respectively may seem expedient; and all such rules, orders, or regulations shall be submitted, for confirmation or disallowance, to the Governor-General of *India* in Council, immediately upon the making of the same; and every such rule, order, or regulation shall, to all intents and purposes, have full effect after it shall have been confirmed by the said Governor-General of *India* in Council; but every such rule, order, and regulation, when so confirmed, shall be transmitted to her Majesty, her heirs or successors, in Council, and shall be subject at any time to be altered or rescinded by her said Majesty, her heirs or successors, in Council. Provided always, that no rule or order to be made, by virtue of this act, shall have the effect of depriving any person of the power of pleading the general issue and giving the special matter in evidence, in any case wherein he is now or hereafter shall be entitled to do so, by virtue of any Act of Parliament now or hereafter to be in force.

Such rules to be subject to confirmation by the Governor-General, and may be altered or rescinded by the Privy Council.

Proviso as to pleading the general issue.

III. AND BE IT ENACTED, that nothing herein contained shall be construed to affect any rights, powers, or privileges now belonging to or inherent in the said Supreme Courts of Judicature respectively.*

Act not to affect rights and powers of Supreme Courts.

* By 1 & 2 Vict. C. 100. The Judges of the superior Courts at Westminster, or any eight or more of them, of whom the chiefs of each of the said Courts shall be three, may, by their orders, make alterations in the mode of pleading in the said Courts; but such orders are not to be valid until six months after they shall have been laid before Parliament. And the Act provides that either the Queen, by proclamation, or the Gazette, or either House of Parliament, by any resolution passed within six months after the rules have been laid before Parliament, may rescind the whole or any part.

ACTS

OF

The Government of India.

ACT No. IV OF 1835.

Passed by the Right Honourable the Governor-General of India in Council, on the 13th March, 1835.

BE IT ENACTED, that from the 14th day of March 1835, all powers whatever, in criminal cases, which by virtue of any law now in force, may be exercised by two Justices of the Peace, for the town of *Calcutta,* shall be exercised by one such Justice. (1)

One Justice to have same powers as two, in criminal cases.

(1) See Stat. 33 G. 3, c. 52. § 158, *ante* 42, and see Act No. 1, of 1837, and Act No. 32, of 1838, *post.*

ACT No. X OF 1835.

Passed by the Hon'ble the Governor-General of India in Council, on the 6th July, 1835.

BE IT ENACTED, that the production of a Government Gazette of any presidency, containing an Act, purporting to have been passed by the Governor General in Council, shall be held, in all Courts, sufficient proof that such act has been so passed.

Government Gazette evidence of Acts.

ACT No. XI OF 1835.

Passed by the Hon'ble the Governor General of India in Council, on the 3d August, 1835.

Press regulations repealed.

I. BE IT ENACTED, that from the fifteenth day of September, 1835, the four regulations, hereinafter specified, be repealed.

1st Provinces. Reg. passed 5th April, 1823.

1st.—A regulation for preventing the establishment of printing Presses, without license, and for restraining under certain circumstances, the circulation of printed books and papers, passed by the Governor General in Council, on the 5th April, 1823.

2d Settlement of Fort William. Reg 14th Mar., registered in Sup. Court 4th April, 1823.

2d.—A rule, ordinance, and regulation for the good order and civil government of the settlement of *Fort William* in *Bengal,* passed in Council, 14th March, registered in the Supreme Court of Judicature, 4th April, 1823.

3d. Bombay. Reg. 2d March registered in Sup. Court 11th May, 1825.

3d.—A rule, ordinance, and regulation for preventing the mischief arising from the printing and publishing newspapers, and periodical and other books and papers, by persons unknown, passed by the Honourable the Governor in Council of Bombay, on the 2d day of March, 1825, and registered in the Honourable the Supreme Court of Judicature at *Bombay,* under date the 11th of May, 1825.

4th. Bombay. Reg 1st January, 1827.

4th.—A regulation for restricting the establishment of printing Presses and the circulation of printed books and papers, passed by the Governor of Bombay in Council, on the 1st of January, 1827.

After 15th September 1835 all printed periodical works containing public news to be regulated by following rules.

II. 1st.—AND BE IT ENACTED, that after the said fifteenth day of September, 1835, no printed periodical work whatever, containing public news or comments on public news, shall be published within the territories of the *East India* Company, except in conformity with the rules hereinafter laid down.

Printer and publisher to appear before

2d.—The printer and the publisher of every such periodical work shall appear before the Magistrate of the jurisdiction within which such work shall be published

and shall make and subscribe in duplicate the following declaration.

magistrate and make declaration.

"I, A. B. declare, that I am the printer (or publisher, or printer and publisher) of the periodical work entitled ————, and printer (or published, or printed and published) at ————." And the last blank in this form of declaration, shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

Form of declaration.

3d.—As often as the place of printing or publication is changed, a new declaration shall be necessary.

Where new declaration necessary.

4th.—As often as the printer or the publisher, who shall have made such declaration as is aforesaid, shall leave the territories of the *East India* Company, a new declaration from a printer or publisher, resident within the said territories, shall be necessary.

III. AND BE IT ENACTED, that whoever shall print or publish any such periodical work, as is hereinbefore described, without conforming to the rules hereinbefore laid down, or whoever shall print or publish, or shall cause to be printed or published any such periodical work, knowing that the said rules have not been observed with respect to that work, shall, on conviction, be punished with fine to an amount not exceeding five thousand rupees, and imprisonment for a term not exceeding two years.

Penalty for not conforming to these rules.

IV. AND BE IT ENACTED, that each of the two originals of every declaration so made and subscribed, as is aforesaid, shall be authenticated by the signature and official seal of the magistrate before whom the said declaration shall have been made, and one of the said originals shall be deposited among the records of the office of the magistrate, and the other original shall be deposited among the records of the Supreme Court of Judicature, or other King's Court, within the jurisdiction of which the said declaration shall have been made. And the officer in charge of each original, shall allow any person to inspect that original on payment of a fee of one rupee, and shall give to any person applying, a copy of the said declaration

Declarations how to be authenticated,

where to be kept,

may be inspected,

attested by the seal of the Court, which has the custody of the original, on payment of a fee of two rupees.

Copy of declaration attested by the seal of the Court where deposited, evidence against person whose name is subscribed to it.

V. AND BE IT ENACTED, that in any legal proceeding whatever, as well civil as criminal, the production of a copy of such a declaration, as is aforesaid, attested by the seal of some Court, empowered by this act to have the custody of such declarations, shall be held (unless the contrary be proved,) to be sufficient evidence, as against the person whose name shall be subscribed to such declaration that the said person was printer, or publisher, or printer, and publisher (according as the words of the said declaration may be), of every portion of every periodical work, whereof the title shall correspond with the title of the periodical work mentioned in the declaration.

Any person ceasing to be printer to make following declaration.

VI. PROVIDED ALWAYS, that any person who may have subscribed any such declaration as is aforesaid, and who may subsequently cease to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any magistrate, and make and subscribe in duplicate the following declaration :

Form of declaration.

" I, A. B. declare, that I have ceased to be the printer (or publisher, or printer and publisher,) of the periodial work entitled ———." And each original of the latter declaration shall be authenticated by the signature and seal of the magistrate before whom the said latter declaration shall have been made, and one original of the said latter declaration shall be filed along with each original of the former declaration ; and the officer in charge of each original of the latter declaration, shall allow any person applying to inspect that original, on payment of a fee of one rupee ; and shall give to any person applying a copy of the said latter declaration, attested by the seal of the Court having custody of the original, on payment of a fee of two rupees ; and in all trials in which a copy, attested as is aforesaid, of the former declaration, shall have been put in evidence, it shall be lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration ; and the former declaration shall not be taken to be evidence that the declarant was, at any period subsequent to the date of the latter

declaration, printer or publisher of the periodical work therein mentioned.

VII. AND BE IT ENACTED, that every book or paper printed after the said fifteenth day of September, 1835, within the territories of the *East India* Company, shall have printed legibly on it, the name of the printer and of the publisher, and the place of printing and of publication; and whoever shall print and publish any book or paper otherwise than in conformity with this rule, shall, on conviction, be punished by fine to an amount not exceeding five thousand rupees, and by an imprisonment for a term not exceeding two years.

Books, &c, to have the name of the printer, &c., on them.

Penalty for not conforming to this rule.

VIII. AND BE IT ENACTED, that after the said fifteenth day of September 1835, no person shall, within the territories of the *East India* Company, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the magistrate of the jurisdiction, wherein such press may be; and whoever shall keep in his possession any such press without making such a declaration, shall, on conviction, be punished by fine to an amount not exceeding five thousand rupees, and by imprisonment for a term not exceeding two years.

No person to keep a press without making the following declaration.

Penalty for non-conformity.

"I, A. B. declare, that I have press for printing at ———." And this last blank shall be filled up with a true and precise description of the premises where such press may be.

Form of declaration.

IX. AND BE IT ENACTED, that any person who shall, in making any declaration, under the authority of this act, knowingly affirm an untruth, shall, on conviction thereof, be punished by fine to an amount not exceeding five thousand rupees, and imprisonment for a term not exceeding two years. (1)

Penalty for making an untrue declaration.

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(1) The law as to the Press, relating to the settlement of Fort William, before the passing of this act, was contained in the regulation, *ante* page 320, registered in the Supreme Court, on the 4th of April 1823.

ACT No. IV OF 1836.

Passed by the Right Hon'ble the Governor General of India in Council, on the 22d February, 1836.

Insolvent Act continued to 1st March 1839.

IT IS HEREBY ENACTED, that the Act of Parliament passed in the 9th year of King *George* the Fourth, and entitled "*An Act to provide for the Relief of Insolvent Debtors in the* East Indies *until the first day of March,* 1833," which Act was, by an Act passed in the 2d year of King *William* the Fourth, continued till the first day of March 1836, shall continue to be in force till the first day of March, 1839.

By sec. 1 it was enacted, "that no person or persons shall, within the said set- "tlement of Fort William, print or publish, or cause to be printed or published, "any newspaper or magazine, register, pamphlet or other printed book or pa- "per whatsoever, in any language or character whatsoever, published periodi- "cally, containing or purporting to contain public news and intelligence, or "strictures on the acts, measures, and proceedings of Government or any poli- "tical events or transactions whatsoever, without having obtained a license for "that purpose from the Governor General in Council." Sec. 2 provided that persons applying for such license should deliver to the Chief Secretary to Government an affidavit specifying the true names, &c. and places of abode of every person or persons, intended to be the printers or publishers of the newspaper, &c. in the said affidavit named, and of all the proprietors if they did not exceed two, in which case the names &c. of two proprietors resident within the presidency of Fort William, holding the larger shares therein, and the true description of the house, &c wherein any such newspaper, &c. was intended to be printed and likewise the title of such newspaper, &c. Sec. 3 provided, that every such affidavit should be in writing, and signed by the persons making it, and should be taken without charge by one Justice of the Peace, acting for the town of Calcutta. Sec 4 required that where the persons concerned as printers, &c. of any such newspaper, &c., together with such number of proprietors, as were required to be named in such affidavit, did not exceed four persons, the affidavit was to be sworn and signed by all the said persons resident in or within 20 miles of Calcutta, and when the number was more than four, it was to be signed by four of such persons if resident in, or within 20 miles of Calcutta, or so many of them as were so resident. By sec. 5, it was enacted, that affidavits of like nature were to be made as often as the persons named in such affidavits changed their place of abode, &c. or their printing house &c. or the title of their newspaper, &c. and as often as the Governor General in Council should deem it expedient to require the same, and in failure of making such further or new affidavit after notice, such newspaper, &c. was to be taken as printed without license, Sec. 6. gave to the Governor General in Council,

ACT No. VIII OF 1836.

Passed by the Right Hon'ble the Governor General of India in Council, on the 28th March, 1836.

I. IT IS HEREBY ENACTED, that from the 31st day of March, 1836, no person whatever shall, by reason of place of birth, or by reason of descent, be incapable of being a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, within the territories, subject to the presidency of Fort William in Bengal.

No person by reason of place of birth, &c. incapable of being a Principal Sudder Ameen, &c.

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authority to resume and recal any such license, upon notice, to the persons to whom the same had been granted and enacted that every newspaper, &c. printed after such notice of recal, would be taken to be printed, &c. without license. Sec. 7 provided, that any person knowingly and willfully printing, &c. or as a proprietor thereof, or agent, &c. selling or disposing of, &c. or any bookseller or keeper of any reading room, &c. receiving, lending, giving or supplying for perusal to any person whatsoever, any newspaper, &c. such license as before mentioned not having been first obtained, or after such license should have been recalled ; such person should forfeit for every such offence a sum not exceeding sicca rupees four hundred. Sec 8 was in these terms, "and be it "further ordained by the authority aforesaid, that all offences committed and all "pecuniary forfeitures and penalties had or incurred under or against this rule, or-"dinance and regulation, shall and may be heard, adjudged and determined by two "or more of the aforesaid Justices of the Peace, who are hereby empowered and "authorised to hear and determine the same and to issue their summons or war-"rant for bringing the party or parties complained of before them, and upon his "or their appearance, or contempt, and default, to hear the parties, examine wit-"nesses and give judgment or sentence according as in and by this rule, ordinance "and regulation is ordained and directed, and to award, and issue out warrants "under their hands and seals for the levying such forfeitures and penalties as "may be imposed upon the goods and chattels of the offender, and to cause sale to "be made of the goods and chattels if they shall not be redeemed within six "days, rendering to the party the overplus if any, be after deducting the amount of "such forfeiture or penalty and the costs and charges attending the levying thereof "and in case sufficient distress shall not be found, and such forfeitures and penal-"ties shall not be forthwith paid, it shall, and may be lawful for such Justices of "the Peace, and they are hereby authorized and required by warrant or warrants "under their hands and seals to cause such offender or offenders to be committed, "to the common gaol of Calcutta there to remain for any time not exceeding four "months, unless such forfeitures and penalties and all reasonable charges shall be "sooner paid and satisfied, and that all the said forfeitures when paid or levied "shall be, from time to time, paid into the Treasury of the United Company of "merchants of England trading to the East Indies, and be employed and disposed "of according to the order and directions of his Majesty's said Justices of the "Peace at their General Quarter or other Sessions," and the regulation concluded with a proviso "that nothing therein contained was to be taken to extend to any "printed book or paper containing intelligence solely of a commercial nature,"

British born subjects, so appointed, liable to same proceedings as if not of British birth or descent.

II. AND IT IS HEREBY ENACTED, that every British born subject of the King, or descendant of such British born subject, who shall be appointed a Principal Sudder Ameen, Sudder Ameen, or Moonsiff, shall, in respect of all acts done by him as such Principal Sudder Ameen, Sudder Ameen, or Moonsiff, be liable to the same proceedings, as well criminal as civil, and shall be amenable to the jurisdiction of the same tribunals, as if he were not of British birth or descent.

ACT No. IX OF 1836.

Passed by the Right Hon'ble the Governor General of India in Council, on the 11th April, 1836.

Commanding officers of a military station out of Company's territories competent to administer oaths as a Justice of the Peace.

IT IS HEREBY ENACTED, that the Commanding officer of any military station, occupied by troops in the service of the *East India* Company, out of the territories of the said Company, shall be competent to administer, within the limits of such military station, any oath which a Justice of the Peace is competent to administer within the said territories, and that such oath shall, in all respects, be of the same effect as if taken within the said territoies, before a Justice of the Peace.

ACT No. XI OF 1836.

Passed by the Right Hon'ble the Governor General of India in Council, on the 9th May, 1836.

Repeals the 107th clause of 53rd Geo. 3.

I. IT IS HEREBY ENACTED, that from the first day of June, 1836, the 107th clause of an Act of Parliament, passed in the 53d year of King *George* 3, and entitled "An Act for continuing in the *East India* Company for a "further term the possession of the *British* territories in "*India*, together with certain exclusive privileges ;—for "establishing further regulations for the government of the

"said territories, and the better administration of justice "within the same, and for regulating the trade to and from "the places within the limits of the said Company's charter," shall cease to have effect within the territories of the *East India* Company.

II. AND IT IS HEREBY ENACTED, that from the said day and within the said territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceeding whatever, exempted from the jurisdiction of any of the Courts hereinafter mentioned, that is to say,

No person by reason of birth, &c. exempted, in civil proceedings, from jurisdiction of courts hereinaftermentioned.

The Courts of Sudder Dewanny Adawlut—of the Zillah and City Judges—of the Principal Sudder Ameens—and of the Sudder Ameens, in the territories subject to the presidency of Fort William in *Bengal.*

The Court of Sudder Adawlut—the Provincial Courts —the Courts of the Zillah Judges, of the Assistant Judges —of the Registers, and of the native Judges in the territories subject to the presidency of *Fort Saint George.*

The Courts of Sudder Adawlut—of the Zillah Judges —of the native Judges—and of the Principal and Junior native Commissioners in the territories subject to the presidency of *Bombay.*

ACT No. I OF 1837.

Passed by the Right Hon'ble the Governor General of India in Council, on the 6th February, 1837.

IT IS HEREBY ENACTED, that from the first day of March next, it shall be lawful for any one Justice of the Peace *for the Town of Calcutta,* to issue a warrant of distress for the recovery of arrears of assessment accruing under the Act of Parliament, 33 George 3, c. 52, and every such warrant shall have the same force as if it were under the hands and seals of two such Justices. (1)

One Justice of the Peace, for Calcutta may issue distress for arrears of assessment.

(1) See Act No. 32, of 1838, *post,* and Act No. 4, of 1835, *ante.*

ACT No. IV OF 1837.

Passed by the Right Hon'ble the Governor General of India in Council, on the 17th April, 1837.

From 1st May 1837, any subject of his Majesty may hold land, &c. in India.

I. IT IS HEREBY ENACTED, that, after the first day of May next, it shall be lawful for any subject of his Majesty, to acquire and hold in perpetuity, or for any term of years, property in land, or in any emoluments issuing out of land, in any part of the territories of the *East India* Company.

Existing rules as to natives to extend to persons acquiring land under this act.

II. AND IT IS HEREBY ENACTED, that all rules which prescribe the manner in which such property, as is aforesaid, may now be acquired, and held by natives of the said territories, shall extend to all persons who shall, under the authority of this act, acquire or hold such property.

ACT No. VII OF 1837.

Passed by the Right Hon'ble the Governor General of India in Council, on the 1st May, 1837.

His Majesty's Courts may permit a convict to be at liberty on his own recognizance when recommended for pardon.

IT IS HEREBY ENACTED, that it shall be lawful for any of the Courts established by his Majesty's charters, in any case in which such Court shall have recommended to his Majesty, the granting of a free pardon to any convict, to permit such convict to be at liberty on his own recognizance.

ACT No. IX OF 1837.

Passed by the Right Hon'ble the Governor General of India in Council, on the 15th May, 1837.

All immoveable property within jurisdiction of his Majesty's Courts, as far

I. IT IS HEREBY ENACTED, that from the first day of June, 1837, all immoveable property, situate within the jurisdiction of any of the Courts established by his Majesty's charter shall, as far as regards the transmission of

such property on the death and intestacy of any Parsee, having a beneficial interest in the same, or by the last will of any such Parsee, be taken to be and to have been of the nature of chattels real, and not of freehold.

as regards the transmission thereof on the death of Parsees, to be considered as chattels real.

II. PROVIDED ALWAYS, that in any suit at law or in equity, which shall be brought for the recovery of such immoveable property as is aforesaid, no advantage shall be taken of any defect of title arising out of the transmission of such property upon the death and intestacy of any Parsee having a beneficial interest in the same, or by the last will of any such Parsee, if such transmission took place before the said first day of June 1837, and if such transmission were either according to the rules which regulate the transmission of freehold property, or else took place with the acquiescence of all persons to whom any interest in that property would, according to the rules which regulate the transmission of chattels real, have accrued upon the death of such Parsee.

In any suit for the recovery of such property, no advantage to be taken of defects of title arising out of transmission of property upon death and intestacy of any Parsee having a beneficial interest in same, or by last will of a Parsee if &c.

ACT No. XII OF 1837.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 5th June, 1837.

I. IT IS HEREBY ENACTED, that every house and out-house built within the city of *Calcutta*, after the first day of November 1837, shall be covered with an outer roof of incombustible materials, and that, if any house or out-house be built in contravention of this provision, the owner of such house or out-house shall, on conviction before a magistrate, be punished with fine not exceeding 100 rupees.

After 1st November 1837, every house, &c. in Calcutta to have an outer roof of incumbustible materials.

II. AND IT IS HEREBY ENACTED, that it shall be lawful for the Superintendant of the Police of the said city, from the date of the passing of this Act, to tender to the owner of any house or out-house within the said city, which house or out-house may have been built before the

Superintendant of Police may tender money to owner to defray expense of so covering.

said first day of November 1837, and which may not be covered with an outer roof of incombustible materials, a sum of money to defray the expense of covering such house or out-house with such an outer roof, and that if the owner of such house or out-house shall accept the sum so tendered and shall engage that such house or out-house shall be covered with such an outer roof within a certain time, and shall not within that time cause such house or out-house to be covered with such an outer roof, such owner shall, on conviction before a magistrate, be punished with a fine not exceeding ten times the sum so accepted by such owner.

Penalty on conviction for not so covering, having accepted tender.

III. AND IT IS HEREBY ENACTED, that if any house or out-house, shall be built in contravention of the provision contained in section I of this Act, or if any owner of a house or out-house shall refuse to accept a sum of money tendered by the said Superintendant in the manner described in section II of this Act, it shall be lawful for the said Superintendant to cause such house or out-house to be covered with an outer roof of incombustible materials without the consent of the owner thereof, and to cause such alterations to be made in the walls of such house or out-house, as may enable such walls to support such outer roof, and to defray the expense out of any funds which may be put at the disposal of the said Superintendant for that purpose, either by the Government or by any private person, or body of private persons.

If house built in contravention of sec. I. or if owner refuse to accept tender, Superintendant may cause house to be covered without his consent, and cause alterations to be made in walls, &c.

IV. AND IT IS HEREBY ENACTED, that whoever shall wilfully obstruct the said Superintendant, or any person acting under the authority of the said Superintendant, in the exercise of the powers given to the said Superintendant by section III of this Act, shall, on conviction before a magistrate, be punished with a fine not exceeding 100 rupees, in excess of any punishment to which the person so obstructing, may be liable by reason of any other offence, which he may commit in the course of such obstruction.

Penalty for obstructing Superintendant.

V. AND IT IS HEREBY ENACTED, that all fines levied under the authority of this Act, shall be paid into the

Fines levied to be paid into

General Treasury, and shall be applied to the purpose of defraying expenses incurred in carrying this act into execution.

Treasury, for purposes of Act.

ACT No. XIV OF 1837.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 12th June, 1837.

IT IS HEREBY ENACTED, that whenever any foreign state in *Asia* or *Africa*, shall permit, within the dominions of such state, the importation or exportation of goods in *British* vessels, on the same terms on which it permits the importation or exportation of goods in vessels belonging to the subjects of such foreign state, it shall be lawful for the Governor General of India in Council, by an order in Council, to direct that goods may be imported into the territories of the *East India* Company, or exported thence in vessels belonging to the subjects of such foreign state, on the same terms on which such goods are imported into the said territories, or exported thence on *British* vessels.

When Governor General may permit the importation of goods of foreign states in Asia or Africa on same terms as on British vessels.

ACT No. XIX OF 1837.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 7th August, 1837.

IT IS HEREBY ENACTED, that no person shall, by reason of any conviction for any offence whatever, be incompetent to be a witness in any stage of any cause, civil or criminal, before any Court, in the territories of the *East India* Company.

No person convicted of any offence, incompetent as a witness, in any court within territories of Company.

ACT. No. XXV OF 1838.

Passed by the Hon'ble the President of the Council of India in Council, on the 8th October, 1838.

Meaning of certain words in this act,

IT IS HEREBY ENACTED, that the words and expressions hereinafter mentioned shall, in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say) the word "Will" shall extend to a testament, and to a codicil, and to an appointment by will or by writing in the nature of a will in exercise of a power, and also to a disposition by will and testament, or devise of the custody and tuition of any child by virtue of an act passed in the twelfth year of the reign of King Charles the Second, intituled "An Act for taking away the Court of wards "and liveries, and tenures *in capite* and by knight's ser-"vice and purveyance, and for settling a revenue upon his "Majesty in lieu thereof," or by virtue of an Act passed in the Parliament of Ireland in the fourteenth and fifteenth years of the reign of King Charles the Second, intituled "An Act for taking away the Court of wards and live-"ries, and tenures *in capite* and by knight's service," and to any other testamentary disposition; And the words Real Estate shall extend to messuages, lands, rents and hereditaments, whether corporeal, incorporeal or personal, and to any undivided share thereof and to any estate, right or interest (other than a chattel interest) therein, and the words "Personal Estate" shall extend to leasehold estates and other chattels real, and also to monies, shares of Government and other funds, securities for money (not being real estates), debts, choses in action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator, and to any share or interest therein; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and every word

Will.

12. Car. 2, c. 24,

14 & 15 Car. 2. (1.)

Real estate.

Personal estate.

Number.

importing the masculine gender only, shall extend and be applied to a female as well as a male. (1) Gender.

II. AND IT IS HEREBY ENACTED, that an Act passed in the thirty-second year of the reign of King Henry the Eighth, intituled "The Act of wills, wards and primer seisins, "whereby a man may devise two parts of his land," and also an Act passed in the thirty-fourth and thirty-fifth years of the reign of the said King Henry the Eighth, intituled "The Bill concerning the explanation of wills;" and also an Act passed in the Parliament of Ireland in the tenth year of the reign of King Charles the First, intituled "An Act how lands, tenements, &c. may be disposed by "will or otherwise, and concerning wards and primer sei-"sins;" and also so much of an Act passed in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of frauds and perjuries;" and of an act passed in the Parliament of Ireland in the seventh year of the reign of King William the Third, intituled "An Act for prevention of frauds and perjuries as "relates to devises or bequests of lands or tenements, or to "the revocation or alteration of any devise in writing "of any lands, tenements or hereditaments, or any clause "thereof, or to the devise of any estate *pur autre vie*, or "to any such estate being assets, or to nuncupative wills, "or to the repeal, altering, or changing, of any will in writ-"ing, concerning any goods or chattels, or personal estate, "or any clause, devise or bequest therein;" and also so much of an Act passed in the fourth and fifth years of the reign of Queen Anne, entituled "An Act for the amendment of "the law and the better advancement of justice;" and of an Act passed in the Parliament of Ireland in the sixth year of the reign of Queen Anne, intituled "An Act for the "amendment of the law and the better advancement of jus-"tice" as relates to witnesses to nuncupative wills; and so far as the following acts may be construed to have any operation within the territories of the *East India* Company,

Repeal of the statute of Wills, 32. H 8 c 1, and 34 & 35 H. 8, c 5.

10 Car 1, sess. 2, c. 2, (1.)

29 Car. 2, c. 3.

ss. 5, 6, 12, 19 to 22, 7 W. 3, c. 12. (1.)

4 & 5 Anne, c. 16. s. 14.

6 Anne, c 10, (1.)

(1.) See in the Appendix, the observations of Ryan C. J on the provisions of this Act, in his charge to the Grand Jury in February 1829.

so much of an Act passed in the fourteenth year of the reign of King George the Second, intituled "An Act to "amend the law concerning common recoveries," and to explain and amend an Act made in the twenty-ninth year of the reign of King Charles the Second, intituled "An Act for prevention of frauds and perjuries" as relates to estates *pur autre vie*; and also an Act passed in the twenty-fifth year of the reign of King George the Second, intituled "An Act for avoiding and putting an end to certain "doubts and questions relating to the attestation of wills "and codicils concerning real estates in that part of Great "Britain called England, and in his Majesty's colonies "and plantations in America," except so far as relates to his Majesty's colonies and plantations in America, and also an act passed in the Parliament of Ireland in the same twenty-fifth year of the reign of King George the Second, intituled "An Act for the avoiding and putting "an end to certain doubts and questions relating to the "attestations of wills and codicils concerning real estates;" shall, from the passing of this Act, cease to have effect in the territories of the *East India* Company, except so far as the same acts or any of them respectively relate to any wills or estates *pur autre vie* to which this Act does not extend.

14 G. 2, c. 20 s. 9.

25 G. 2, c. 6, (except as to colonies in America).

25 G. 2. c. 11, (I.)

Limitation of act.

III. AND IT IS HEREBY ENACTED, that this Act shall only extend to the wills of persons whose personal property cannot, by the law of England, pass to their representatives without probate or letters of administration, obtained in one of her Majesty's Supreme Courts of Judicature, and that the statutes and parts of statutes aforesaid, are only repealed as far as they relate to the succession to the property of such persons.

All property may be disposed of by will, executed as after mentioned.

IV. AND IT IS HEREBY ENACTED, that it shall be lawful for every person to devise, bequeath or dispose of by his will, executed in manner hereinafter required, all real estate and all personal estate, which he shall be entitled to, either at law or in equity, at the time of his death, and which, if not so devised, bequeathed or disposed of, would devolve upon the heir at law of him, or, if he

became entitled by descent, of his ancestor, or upon his executor or administrator, and that the power hereby given shall extend to all estates *pur autre vie*, whether there shall or shall not be any special occupant thereof, and whether the same shall be a corporeal or an incorporeal hereditament, and whether the same shall be freehold or of any other tenure, and also to all contingent, executory or other future interests in any real or personal estate, whether the testator may or may not be ascertained as the person or one of the persons in whom the same respectively may become vested, and whether he may be entitled thereto under the instrument by which the same respectively were created, or under any disposition thereof by deed or will; and also to all rights of entry for conditions broken, and other rights of entry; and also to such of the same estates, interests, and rights respectively, and other real and personal estate as the testator may be entitled to, at the time of his death, notwithstanding that he may become entitled to the same subsequently to the execution of his will.

to extend to estates *pur autre vie*;

contingent interests;

rights of entry;

and property accruing after execution of the will.

V. AND IT IS HEREBY ENACTED, that no will made by any person under the age of twenty-one years, shall be valid. (1)

No will of person under age, valid.

VI. PROVIDED ALSO, AND IT IS HEREBY ENACTED, that no will made by any married woman shall be valid, except such a will as might have been made by a married woman before the passing of this Act.

Nor of a married woman except such as she might have made before this act.

VII. AND IT IS HEREBY ENACTED, that no will shall be valid unless it shall be in writing and executed in manner hereinafter mentioned; (that is to say,) it shall be signed at the foot or end thereof by the testator or by some other person in his presence and by his direction, and such

Every will shall be in writing, and signed by the testator in the presence of two witnesses at same time.

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(1) This enactment has rendered the disability of enforcing nearly universal. All that an infant can now do to bind his property, is to incur a debt for necessaries, and being a female, by entering into the married state, to confer on her husband the absolute interest in her personal property in possession, a certain qualified interest in her remaining personal property, and an estate for his own, or at least for their joint lives in her freehold estates.

signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time, and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary.

Appointments by will to be executed like other wills and to be valid, though other required solemnities are not observed.

VIII. AND IT IS HEREBY ENACTED, that no appointment made by will in exercise of any power, shall be valid, unless the same be executed in manner hereinbefore required; and every will executed in manner hereinbefore required shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by will, notwithstanding that it shall have been expressly required, that a will made in exercise of such power, should be executed with some additional or other form of execution or solemnity.

Publication not requisite.

IX. AND IT IS HEREBY ENACTED, that every will executed in manner hereinbefore required, shall be valid without any other publication thereof.

Will not void on account of incompetency of attesting witness.

X. AND IT IS HEREBY ENACTED, that if any person, who shall attest the execution of a will, shall at the time of the execution thereof, or at any time afterwards, be incompetent to be admitted a witness to prove the execution thereof, such will shall not, on that account, be invalid.

Gifts to an attesting witness, his wife or husband or person claiming under them, void.

XI. AND IT IS HEREBY ENACTED, that if any person shall attest the execution of any will, to whom or to whose wife or husband any beneficial devise, legacy, estate, interest, gift or appointment of or effecting any real or personal estate (other than and except charges and directions for the payment of any debt or debts) shall be thereby given or made, such devise, legacy, estate, interest, gift or appointment shall, so far only as concerns such person attesting the execution of such will, or the wife or husband of such person, or any person claiming under such person or wife or husband, be utterly null and void, and such person so attesting shall be admitted as a witness to prove the execution, or to prove the validity or invalidity thereof, notwithstanding such devise, legacy, estate, interest, gift or appointment mentioned in such will.

XII. AND IT IS HEREBY ENACTED, that in case by any will, any real or personal estate shall be charged with any debt or debts, and any creditor, or the wife or husband of any creditor, whose debt is so charged, shall attest the execution of such will, such creditor, notwithstanding such charge, shall be admitted a witness to prove the execution of such will, or to prove the validity or invalidity thereof.

Creditor attesting to be admitted a witness.

XIII. AND IT IS HEREBY ENACTED, that no person shall, on account of his being an executor of a will, be incompetent to be admitted a witness to prove the execution of such will, or a witness to prove the validity or invalidity thereof.

Executor to be admitted a witness.

XIV. AND IT IS HEREBY ENACTED, that every will made by a man or woman, shall be revoked by his or her marriage (except a will made in exercise of a power of appointment, when the real or personal estate thereby appointed would not, in default of such appointment, pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions).

Will to be revoked by marriage.

XV. AND IT IS HEREBY ENACTED, that no will shall be revoked by any presumption of an intention, on the ground of an alteration in circumstances.

No will to be revoked by presumption.

XVI. AND IT IS HEREBY ENACTED, that no will or codicil, or any part thereof, shall be revoked otherwise than as aforesaid, or by another will or codicil executed in manner hereinbefore required, or by some writing declaring intention to revoke the same, and executed in the manner in which a will is hereinbefore required to be executed, or by the burning, tearing or otherwise destroying the same by the testator, or by some person in his presence and by his direction, with the intention of revoking the same.

No will to be revoked but by another will or codicil, or by a writing executed like a will, or by destruction.

XVII. AND IT IS HEREBY ENACTED, that no obliteration, interlineation or other alteration made in any will after the execution thereof, shall be valid or have any effect, except so far as the words or effect of the will, before such alteration shall not be apparent, unless such alteration shall

No alteration in a will shall have any effect unless executed as a will.

be executed in like manner as hereinbefore is required for the execution of the will; but the will, with such alteration as part thereof, shall be deemed to be duly executed, if the signature of the testator and the subscription of the witnesses be made in the margin or some other part of the will opposite or near to such alteration, or at the foot or end of or opposite or near to such alteration, or at the foot or end of or opposite to a memorandum referring to such alteration, and written at the end or some other part of the will.

No will revoked to be revived otherwise than by re execution or a codicil to revive it.

XVIII. AND IT IS HEREBY ENACTED, that no will or codicil, or any part thereof, which shall be in any manner revoked, shall be revived otherwise than by the re-execution thereof, or by a codicil executed in a manner hereinbefore required, and shewing an intention to revive the same, and when any will or codicil, which shall be partly revoked, and afterwards wholly revoked, shall be revived, such revival shall not extend to so much thereof as shall have been revoked before the revocation of the whole thereof, unless an intention to the contrary be shown.

A devise not to be rendered inoperative by any subsequent conveyance or Act. except revocation.

XIX. AND IT IS HEREBY ENACTED, that no conveyance or other Act made or done subsequently to the execution of a will of, or relating to any real or personal estate therein comprised, except an Act by which such will shall be revoked as aforesaid, shall prevent the operation of the will with respect to such estate or interest in such real or personal estate as the testator shall have power to dispose of by will at the time of his death.

A will shall be construed to speak from the death of the testator, unless, &c.

XX. AND IT IS HEREBY ENACTED, that every will shall be construed, with reference to the real estate and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of the testator, unless a contrary intention shall appear by the will.

A residuary devise shall include estates comprised in lapsed and void devises.

XXI. AND IT IS HEREBY ENACTED, that unless a contrary intention shall appear by the will, such real estate and interest therein, as shall be comprised or intended to be comprised in any devise in such will contained, which

shall fail or be void by reason of the death of the devisee in the life time of the testator, or by reason of such devise being contrary to law, or otherwise incapable of taking effect, shall be included in the residuary devise, (if any) contained in such will.

XXII. AND IT IS HEREBY ENACTED, that a general devise of the real estate of the testator, or of the real estate of the testator in any place or in the occupation of any person mentioned in his will, or otherwise described in a general manner, shall be construed to include any real estate, or any real estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will; And in like manner, a bequest of the personal estate of the testator or any bequest of personal estate described in a general manner, shall be construed to include any personal estate, or any personal estate to which such description shall extend (as the case may be) which he may have power to appoint in any manner he may think proper, and shall operate as an execution of such power, unless a contrary intention shall appear by the will.

A general devise of the real estate of the testator, shall include any real estate which he may have power to appoint, unless, &c.

A bequest of personal estate to include any personal estate, unless, &c.

XXIII. AND IT IS HEREBY ENACTED, that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will.

A devise without any words of limitation to pass the fee simple.

XXIV. AND IT IS HEREBY ENACTED, that in any devise or bequest of real or personal estate, the words "die without issue," or "die without leaving issue," or any other words which may import either a want or failure of issue of any person in his life time, or at the time of his death, or an indefinite failure of his issue, shall be construed to mean a want or failure of issue in the life time or at the time of the death of such person, and not an indefinite failure of his issue, unless a contrary intention

Meaning of words "die without issue" "die without leaving issue,"

shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift being, without any implication arising from such words, a limitation of an estate tail to such person or issue, or otherwise; Provided, that this Act shall not extend to cases where such words as aforesaid import, if no issue described in a preceding gift shall be born, or if there shall be no issue who shall live to attain the age or otherwise answer the description required for obtaining a vested estate by a preceding gift to such issue.

Proviso.

A devise of real estate to a trustee or executor to pass the fee simple, unless a term given.

XXV. AND IT IS HEREBY ENACTED, that where any real estate shall be devised to any trustee or executor, such devise shall be construed to pass the fee simple, or other the whole estate or interest which the testator had power to dispose of by will in such real estate, unless a definite term of years, absolute or determinable or an estate of freehold, shall thereby be given to him expressly or by implication.

Trustees under an unlimited devise, where the trust may endure beyond the life of a person beneficially entitled for life to take the fee.

XXVI. AND IT IS HEREBY ENACTED, that where any real estate shall be devised to a trustee without any express limitation of the estate to be taken by such trustee, and the beneficial interest in such real estate, or in the surplus rents and profits thereof, shall not be given to any person for life, or such beneficial interest shall be given to any person for life, but the purposes of the trust may continue beyond the life of such person, such devise shall be construed to vest in such trustee the fee simple, or other the whole legal estate which the testator had power to dispose of by will in such real estate, and not an estate determinable when the purposes of the trust shall be satisfied.

Devise of estate tail shall not lapse.

XXVII. AND IT IS HEREBY ENACTED, that where any person, to whom any real estate shall be devised for an estate tail, or an estate in quasi entail, shall die in the life time of the testator, leaving issue who would be inheritable under such entail, and any such issue shall be living at time of the death of the testator, such devise shall not lapse, but shall take effect as if the death of such person

had happened immediately after the death of the testator, unless a contrary intention shall appear by the will.

XXVIII. AND IT IS HEREBY ENACTED, that where, any person being a child or other issue of the testator, to whom any real or personal estate shall be devised or bequeathed, for any estate or interest not determinable at or before the death of such person, shall die in the life time of the testator, leaving issue, and any such issue of such person shall be living at the time of the death of the testator, such devise or bequest shall not lapse, but shall take effect, as if the death of such person had happened, immediately after the death of the testator, unless a contrary intention shall appear by the will.

Gifts to children or other issue who leave issue living at the testator's death, shall not lapse, unless, &c.

XXIX. AND IT IS HEREBY ENACTED, that notwithstanding any thing in this Act contained, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his personal estate as he might have done before the making of this Act.

Soldiers' and mariners' wills excepted, as to personal estate.

XXX. AND IT IS HEREBY ENACTED, that nothing in this Act contained, shall be construed to repeal the provisions of Act No. XX of 1837, whereby immoveable property, situate within the jurisdiction of the Court of Judicature of Prince of Wales' Island, Singapore and Malacca, transmitted by the last will of any person having a beneficial interest in the same, is taken to be and to have been of the nature of chattels real and not of freehold, as regards such transmission, provided that such will shall be executed and construed as a will of chattels real, is to be executed and construed by virtue of this Act.

This Act not to repeal Act No. 20, of 1837.

XXXI. AND IT IS HEREBY ENACTED, that this Act shall not extend to any will made before the first day of February, in the year of our Lord 1839, and that every will re-executed or re-published or revived by any codicil shall, for the purposes of this Act, be deemed to have been made at the time at which the same shall be so re-executed, republished, or revived; and that this Act shall not extend to any estate *pur autre vie* of any person who shall die before the first day of February, in the year of our Lord, 1839.

Act not to extend to wills made before 1st Feb. 1839.

ACT No. XXVIII OF 1838.

Passed by the Hon'ble the President of the Council of India in Council, on the 5th November, 1838.

No

Person convicted of perjury at Sessions of Oyer and Terminer may be transported for life, or any term of years or imprisoned and kept to hard labour and solitary confinement.

IT IS HEREBY ENACTED, that where any person or persons shall be convicted at any Sessions of Oyer and Terminer or Gaol Delivery, that shall be holden for any of the presidencies of Fort William, Fort St. George, the presidency or island of Bombay, or for Prince of Wales' Island, Singapore, or Malacca, of the crime of perjury, it shall be lawful for the Court, before which any person shall be so convicted, to order and adjudge such person to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term, not exceeding four years, with or without hard labour, and with solitary confinement for such portion or portions of the said term as such Court shall think fit, not exceeding one month at a time, or three months within the period of one year. Provided, that it shall not be lawful for any such Court to order the transportation of any person, being a native of the *East Indies*, and not born of European parents, to the Eastern Coast of New South Wales, or any of the islands adjacent thereto. (1)

Proviso.

Natives of India not to be transported to eastern coast of New South Wales, &c.

(1) The 13th section of the 39 & 40 G 3 c 79 provides, "That persons convicted of perjury, of larceny or any other offence, for which such persons, before the passing of that Act would have been liable, by the law of England, to have been transported, may be transported when convicted of such offences by the Queen's Courts." Perjury was a transportable offence by 2 G 2, c. 25. in England, at the time of passing the 39 & 40 G. 3, and became by the latter Act a transportable offence here. The 13th section of 39 & 40 G. 3, was repealed by 9 G 4 c. 74. s. 126, and according to the construction of the Judges of this Court, the 2 G. 2, c. 25, did not of itself extend to India. Perjury, therefore, became no longer an offence punishable by transportation To remedy this evil, the present Act was passed. As the law stood before this Act, perjury committed in the Mofussil Court, was under s 72, 9 G. 4, c. 74, a transportable offence. If convicted in the Supreme Court it was only punishable as a misdemeanor by fine and imprisoment. See also Act No. 31, of 1838, § 38, *post*.

ACT No. XXXI OF 1838.

Passed by the Hon'ble the President of the Council of India in Council, on the 3d December, 1838.

I. IT IS HEREBY ENACTED, that so much of a statute made and passed in the 9th year of the reign of his late Majesty King George the Fourth, entitled "An Act for "improving the administration of criminal justice in the "*East Indies*," as relates to any person, who, unlawfully and maliciously, shall administer or attempt to administer to any person, or shall cause to be taken by any person, any poison or other destructive thing, or shall unlawfully and maliciously attempt to drown, suffocate, or strangle any person, or shall unlawfully and maliciously shoot at any person, or shall by drawing a trigger or in any other manner attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut or wound any person, (1) with intent in any of the cases aforesaid to murder such person; and so much of the said Act as relates to any person, who shall unlawfully and maliciously shoot at any person, or shall by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall unlawfully and maliciously stab, cut or wound any person, with intent in any of the cases aforesaid, to main, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension, or detainer of the party so offending, or of any of his accomplices for any offence for which he or they may respectively be liable by law to be apprehended or detained; (2) and so much of the said Act as relates to any person who, with intent to procure the miscarriage of any woman, then being quick with child, unlawfully and maliciously shall administer to her or cause to be taken

Repeals various sections of 9 G. 4, c 74.

(1) § 59 of 9 G. 4. c. 74, which this act repeals.
(2) § 60 Ib. repealed.

by her, any poison or other noxious thing, or shall use any instrument or other means, whatsoever with the like intent; and who with intent to procure the miscarriage of any woman, not being or not being proved to be then quick with child, unlawfully and maliciously shall administer to her, or cause to be taken by her, any medicine or other thing, or shall use any instrument or other means whatever with the like intent; (1) and so much of the said Act as relates to any person, who shall rob any other person of any chattel, money, or valuable security; (2) and so much of the said Act as relates to any person, who shall accuse or threaten to accuse any other person of any infamous crime, with a view or intent to extort or gain from him, and shall, by intimidating him by such accusation or threat, extort or gain from him any chattel, money or valuable security; (3) and so much of the said Act as relates to any person, who shall steal from the person of another, or shall assault any other person with intent to rob him, or shall, by menaces or by force, demand property of any other person with intent to steal the same; (4) and so much of the said Act as relates to any person, who shall be convicted of burglary; (5) and so much of the said Act as relates to any person who shall break and enter any dwelling house and steal therein any chattel, money or valuable security, to any value whatever, or shall steal any such property to any value whatever in any dwelling house, any person therein being put in fear, or shall steal in any dwelling house any chattel, money or valuable security, to the value in the whole, of fifty Company's Rupees or more; (6) and so much of the said Act as relates to any person, who shall plunder and steal any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, any goods, merchandize, or articles of any kind belonging to such ship or vessel; (7) and so much of the

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(1) § 61 of 9 G. 4. c. 74, repealed.
(2) § 80 repealed.
(3) § 81 repealed.
(4) § 80 repealed.
(5) § 84 repealed.
(6) § 85 repealed.
(7) § 90 repealed.

said Act as relates to any person who shall unlawfully and maliciously set fire to any church or chapel, or other public place of religious worship whatsoever, or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, ware-house, office, shop, mill, barn, or granary, or to any building or erection used in carrying on any trade or manufacture or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person; (1) and so much of the said Act as relates to any person who shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be complete, or in an unfinished state, or shall unlawfully and maliciously set fire to any goods, being on board any ship or vessel as cargo, with intent to destroy such cargo or ship, and with intent thereby to prejudice any owner or part owner of such ship or vessel, or any owner or part owner of any goods on board the same, or any person that hath underwritten, or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof, or upon any goods on board the same; (2) and so much of the said Act as relates to any person who shall exhibit any false light or signal with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, or destroy any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize or articles of any kind belonging to such ship or vessel, or shall by force prevent or impede any person endeavouring to save his life from such ship or vessel (whether he shall be on board or shall have quitted the same); (3) and so much of the said Act as relates to any person who shall unlawfully and malicious set fire to any stack of rice, corn, or other grain or

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(1) § 114 9 G. 4, c. 74, repealed.
(2) § 117 repealed.
(3) § 119 repealed.

pulse, or sugar cane, whether standing or cut down, or to any part of a wood, coppice or plantation of trees or valuable plants or to any grass, fern, or other like ground produce, wheresoever the same may be growing; (1) and so much of the said Act as relates to the punishment of principals in the second degree, and of accessaries before and after the fact respectively, to such of the felonies punishable under those Acts as are hereinbefore referred to, shall, from the time of passing this Act, cease to have effect within the territories of the *East India* Company, except as to offences committed before or upon the day of passing this Act, which shall be dealt with and punished as if this Act had not been passed.

Extent of this Act over whom and what places.

II. AND IT IS HEREBY ENACTED, that this Act shall extend to all persons, and over all places over whom or which the criminal jurisdiction of any of her Majesty's Courts of Justice, within the territories under the Government of the *East India* Company extends, but not further or otherwise.

Administering poison, stabbing &c. with intent to commit murder,

Capital.

1 Vic. c. 85, § 2.

III. AND IT IS HEREBY ENACTED, that whosoever shall administer to, or cause to be taken by, any person any poison or other destructive thing, or shall stab, cut, or wound any person, or shall by any means whatsoever cause to any person any bodily injury dangerous to life, with intent in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof, shall suffer death. (1)

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(1) § 59, 9 G. 4. c. 74. repealed.

See the observations of Ryan, C. J., on this and the following section, in his charge to the Grand Jury, on the 18th of February, 1839. Appendix.

It was decided in Regina *v.* Cruse and wife, that on an indictment for inflicting an injury dangerous to life, with intent to murder, the Jury ought not to convict, unless they are satisfied, that the prisoner had in his mind a positive intention to murder, and it is not sufficient, that it would have been a case of murder, if death had ensued.

As soon as the prisoners were called upon to plead, Carrington for the prisoners put in two demurrers, one for each prisoner. Williams for the prosecution joined in demurrer.

Before Patteson J., Oxford Circuit, 1838, 8 Carr. & P. 541. In which see the indictment set forth at length.

IV. AND IT IS HEREBY ENACTED, that whosoever shall attempt to administer to any person, any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit the crime of murder, shall, although no bodily injury shall be effected, be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Attempt to poison, shoot at, &c. with intent to commit murder, though no bodily injury effected,

Punishment.

1 Vic. c. 85, §. 3.

The demurrers were in the form given in Archbold's Criminal Pleading, they were engrossed on parchment, and signed by the prisoner's counsel.

Patteson J., " I at present incline to think, that the indictment is not good; " but as this is a very recent act of Parliament, I should like to have the point " considered. If I were to decide in favor of the demurrers, that would put an " end to the case, and if I overruled the demurrers, the prisoners would be " obliged to sue out a writ of error. However, if the demurrers are with- " drawn, I will reserve the case for the consideration of the fifteen Judges, and " will take care that the prisoners shall have every advantage of the demurrers, " if the Judges should think the objection valid." The demurrers were withdrawn, and the prisoners pleaded not guilty, and evidence was gone into. On the 17th of Nov. following, before Lord Denman, C. J. Tindal, C. J. Lord Abinger, C. B. Vaughan, J. Parke, B. Bolland, B. Bosanquet, J. Alderson B. Patteson, J. Williams, J Coleridge, J., and Coltman, J. Carrington was heard for the prisoners and the observations of all the Judges are given at great length. Lord Abinger, C. B., observed " The case now before us was " one that must have been left to the Jury, and they have convicted the parties " of an offence, of which they can be jointly convicted."

The Judges held, that the description of the means in this indictment necessarily involved the nature and situation of the bodily injury, and that this indictment was, therefore, good even assuming, for the sake of argument, that it was necessary to state the nature and situation of the injury; and with respect to the presumed coercion of the wife, their Lordships were unanimously of opinion, that the point did not arise, as the ultimate result of the case was a conviction for misdemeanor.

(1) The Criminal Law Commissioners observe, " that in principle there seems " to be no reason for a distinction as to the punishment between a direct attempt " to murder, however effected, and unattended with injury to the object, and the " combined facts of the attempt and the actual injury. It is therefore on the " ground of policy alone, that we have thought it proper to place so grave a crime " as deliberate design to murder, among secondary offences." Letter to Lord John Russell, 19th January 1837. These offences were formerly punishable with death under § 59, 9 G. 4, c. 74.

Shooting at, stabbing, cutting, &c., with intent to maim, &c.

V. AND IT IS HEREBY ENACTED, that whosoever unlawfully and maliciously shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall stab, cut, or wound any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable such person, or to do some other grievous bodily harm to such person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Punishment.

1 Vic. c. 85, §. 4

(1) The Criminal Law Commissioners proposed, that notwithstanding the diminution of punishment, the effect of the limitation contained in the existing statute. (In England 9 G 4, c. 31, § 12, here 9 G. 4, c. 74. § 60.) should be continued, namely, that the offences above specified, must be committed under such circumstances that, if death had ensued thereupon, the same would in law have amounted to the crime of murder. They add, "the circumstances, which in law, distinguish murder from manslaughter, or justifiable homicide, are premeditation and malice, and it appears to us, that the existence of these circumstances provides a substantial ground of distinction in estimating the proper degree of punishment to be appropriated to acts of violence, not actually producing death."

The suggestion of the Commissioners was not, however, on this point adopted by the Legislature, and this important limitation is omitted in the 1 Vic. c. 85. § 4, from which § 5. of the present act is taken. The omission of this provision has certainly made a material alteration in our criminal law. "The distinction therefore is here plainly drawn between the preconceived malice, or as it is termed malice prepense, which is necessary to constitute an offence within the 3d and 4th sections of this act, and the malice which is an ingredient in offences defined by the fifth section; in the former the malice must be preconceived or presumed to be so, in the latter it need not. If the offence arise from a sudden ebullition of passion, or upon sudden and urgent provocation, so that if death had ensued, the offence would be manslaughter only, in that case the offence, although not within the third and fourth section, is within the fifth section." Mr Archbold from whose notes, on the recent criminal statutes, the above extract is taken, page 30, adds, "It is not perhaps very safe or very prudent to generalize upon a subject such as this, in the absence of all decisions upon it; but it seems to me, that it may reasonably be laid down as a general rule upon the subject, that if the offence be proved to have been committed with any of the intents mentioned in this section, malice will be presumed from the intent, unless the offence were committed by the party in the necessary defence of his person or property." Since Mr. Archbold's observations were made, a case has been decided, which seems to establish his view of the law; In Regina v. Griffiths, 8 Carr. & Payne. 248, which was a case of wounding with intent to do some grievous bodily harm; it was submitted by the prisoner's counsel, that if death had ensued, the offence would not have amounted to murder,

VI. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciouly send or deliver to, or cause to be taken or received by any person, any explosive substance or any other dangerous or noxious thing, or shall cast or throw upon or otherwise apply to any person any corrosive fluid, or other destructive matter, with intent in any of the cases aforesaid, to burn, maim, disfigure, or disable any person or to do some other grievous bodily harm to any person, and whereby, in any of the cases aforesaid, any person shall be burnt, maimed, disfigured, or disabled, or receive some other grievous bodily harm, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Sending explosive substances, or throwing destructive matter, with intent to do bodily harm, and party injured.

Punishment.

1 Vic. c. 85, §. 5.

VII. AND IT IS HEREBY ENACTED, that whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument, or other means whatsoever, with the like intent, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any

Administering poison or trying to procure miscarriage, &c.

Punishment.

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and that the case was not therefore within the statute. Alderson B. "I should "say, that if death had ensued, the offence would have been manslaughter, it is "however within the 4th section of 7 W. 4, and 1 Vic. c. 85," (from which the present section is taken) In summing up, Alderson B. says, "If this had been a "case under the former act of Parliament, the prisoner would have been entitled "to his acquittal, because, if death had ensued, there would only have been a "bad case of manslaughter, but under the law as it now stands, it is very necessary "that the offence should have been committed maliciously, and with one of the "intents laid in the indictment, however by the term, maliciously, is not "meant, with "malice aforethought," because, if it were malice aforethought, "that would constitute a still more grave offence, as that would show an "intent "to murder." The reporter adds in a note, "that a case similar to this was "brought under the consideration of the 15 Judges from the Norfolk Circuit, "and their Lordships were of opinion, that the above construction of the Act "of Parliament and of the word "maliciously," was right."

(1) See statute 6 G. 1, c. 23, §11, repealed by 7 G. 4, c. 64, §32. Rex v. Williams, 1 Leach, 529, 1 East P. C. 424.

1 Vic. c. 85, § 6

term of years, or to be imprisoned for any term not exceeding four years. (1)

Where felony includes an assault, jury may acquit of former, and find assault only.

VIII. AND IT IS HEREBY ENACTED, that on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, where the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding, and when such verdict shall be found, the Court shall have power to imprison the person, so found guilty of an assault, for any term not exceeding four years. (2).

Punishment.

1 Vic. c. 85, § 11.

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(1) See observations of Ryan C. J., on this section, in his charge February, 1839.

(2) See Ibid. A person indicted for a rape may, under this section, be found guilty of an assault. Regina v. Saunders, 8 Carr & Payne, 265. Regina v. Williams, ibid 286. See *post*.

This section applies to indictments for offences, before it came into operation Regina v. Hagan, 8, Carr. and P. 167.

On an indictment against a prisoner charging him with the capital offence of bestiality, the jury cannot find him guilty of the assault under this section, but if they acquit him of the capital charge, he may be detained in custody and indicted for a misdemeanor in attempting to commit a felony; Regina v. Eaton 417, Central Crim. Court, 1838, before Vaughan J., Bolland B., and Patteson J, In which see form of indictment. Vaughan J. (the other Judges being present,) told the jury in his summing up, "that the 11th sec. of 7 W. 4, and of 1 Vict. c. "85, did not apply to a case like that which was before them, so as that they "could find the prisoner guilty of an assault only upon the indictment for the "capital offence: but that a separate indictment for a misdemeanor might be "preferred against him."

The prisoner being acquitted of the capital charge, was detained in custody, and a bill for a misdemeanor returned by the grand jury a true bill, the prisoner was tried and convicted, and sentenced to two years imprisonment and hard labour.

If a person gets into the bed of a married woman, and, by a fraud upon her, have a connexion with her by her consent, she, believing it to be her husband and consenting, because she believes it to be her husband, this is not a rape but if the person be indicted for a rape, he may be found guilty of an assault under the Stat. 1 Vict. c. 85, §. 11. The indictment was in the usual form of an indictment for a rape. Verdict guilty of an assault. The prisoner was sentenced to three years imprisonment and hard labour. Regina v. Saunders, 8 Carr. and P. 265. Before Mr. B. Gurney, Oxford Circuit, 1838.

N. B. There has lately been published at Paris, a work of Dr. Parent du Chatelet, one of the Members of the Conseil, de Salubrite de la ville de Paris and Physician of the Hospital de la Pitie, respecting the filles publiques of

IX. AND IT IS HEREBY ENACTED, that whosoever shall burglariously break and enter into any dwelling house, and shall assault with intent to murder any person being therein, or shall stab, cut, wound, beat or strike any

Burglary with violence to person,

Capital.

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that city, which contains some very valuable information respecting the proof of this class of offences, which the registration and medical inspection of the filles publiques gave very great opportunity for obtaining.

If a man has connexion with a woman, she consenting under the belief that it is her husband, this is not a rape, although it be a fraud on the part of the man, but it is an assault, and the fact that there was no resistance on her part, makes no difference, as the fraud is sufficient to make it an assault, and if, on a trial for rape, the party be convicted of such assault, he may be sentenced to hard labour. The indictment as in the former case, was in the usual form, for rape. Verdict, guilty of assault, sentence, three years' imprisonment and hard labor.

The question as to whether, in such cases, hard labour could form part of the sentence, was considered by the 15 Judges, and they held that the sentence was right. Regina *v.* Williams, Ibid 286, before Mr. B. Alderson, Oxford Circuit, 1838.

The offence of carnally knowing and abusing a female child, under ten years' old, is not a felony, which includes an assault within the Stat. 1 Vic. c 85. § 11, even though it be stated in the indictment for the felony, that the prisoner made an assault on the child.

Patteson, J (in summing up) observed " I am of opinion, that this offence does " not include an assault, and that you must either find, that the prisoner is guilty " of the whole charge or acquit him.

Verdict, guilty of the capital offence. Regina *v.* Banks, Ibid. 574, before Mr. Justice Patteson, Oxford Circuit, 1838.

An attempt to commit the misdemeanor of having carnal knowledge of a girl, between the ages of ten and twelve, is not an assault, as the consent of the girl puts an end to the charge of assault. To support a charge of assault, such an assault must be shewn as could not be justified, if an action were brought for it, and leave and license pleaded. Regina *v.* Meredith, Ibid 589.

Mr Godson, for the defendant, argued.—" The consent puts the charge of " assault out of the question, this misdemeanor, if completed, would not include " an assault, because of the consent. Mr. Justice Patteson decided this " point at Stafford, in the case of Regina *v.* Banks."

Greaves for the prosecution—" It is a misdemeanor to carnally know and " abuse a child, between the ages of ten and twelve, I submit, that an imposition " of hands for the purpose of committing that misdemeanor, is an assault."

Lord Abinger, C. B. " Mr Godson puts it quite correctly, and I know that " the opinion of Mr. Justice Patteson is as he has stated. It has recently been " held in more cases than one, that an attempt to commit a misdemeanor created " by statute, is a misdemeanor at common law. I recollect arguing a case of " Rex V. Higgins, and there Lord Kenyon said, that any attempt to commit a " felony is a misdemeanor; but that an attempt to commit a misdemeanor was not " a misdemeanor; but in subsequent cases, it has been held otherwise. (*a*) Still

(*a*) See the cases of Rex *v.* Butler, Carr. & P. vol. 6, p. 368, and Rex *v.* Roderick, vol. 7, p. 795.

1 Vic. c. 86, § 2.

such person, shall be guilty of felony, and being convicted thereof shall suffer death. (1)

Punishment of burglary.

X. AND IT IS HEREBY ENACTED, that whosoever shall be convicted of the crime of burglary, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term, not exceeding four years. (2)

1 Vic. c. 86, § 3.

When breaking into a house considered burglary definition of *night*.

XI PROVIDED ALWAYS, AND IT IS HEREBY ENACTED, that, so far as the same is essential to the offence of burglary, the night shall be considered, and is hereby declared to commence at nine of the clock in the evening, and to conclude at six of the clock in the morning of the next succeeding day.

1 Vic. c 86, § 4.

Stealing in a dwelling house, with menaces, or to value of 50 rs., or breaking into and stealing.

XII. AND IT IS HEREBY ENACTED, that whosoever shall steal any property in any dwelling house, and shall, by any menace or threat, put any one being therein, in bodily fear, or shall steal in any dwelling house any property to the value, in the whole, of fifty Company's rupees or more, or shall break and enter any dwelling house, and steal therein any property, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as

Punishment.

"I think that an attempt to commit a misdemeanor is not indictable, unless there "be some illegal act done; and I think that taking any step towards the com- "mission of a misdemeanor, not by an illegal act, would not be sufficient Sup- "pose for instance that a man intended to commit the misdemeanor mentioned "by Mr Greaves, and was to take his horse and ride to the place where the "child was, that would be a step towards the commission of the offence, "but would not be indictable. To support a charge of assault, you must shew "an assault, which could not be justified, if an action were brought for it, and "leave and license pleaded."

Verdict, not guilty. Before Lord Abinger, C. B Oxford Circuit, 1838.

But see Rex v. John Nichol, Russ. and Ry. C. C. R. 1807, p. 130, where it was held, that if a master takes indecent liberties with a female scholar, without her consent, though she does not resist, he is liable to be punished as for an assault.

(1) See observations of Ryan, C. J., on this and the three following sections in his charge, February, 1839.

(2) Formerly punishable with death under § 84, 9 G. 4, c. 74.

the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1) 1 Vic. c. 86, § 5.

XIII. AND IT IS HEREBY ENACTED, that whosoever shall rob any person, and at the time of or immediately before, or immediately after such robbery, shall stab, cut or wound any person, shall be guilty of felony, and being convicted thereof, shall suffer death. (2) Robbery attended with cutting, capital. 1 Vic. c. 87. § 2.

XIV. AND IT IS HEREBY ENACTED, that whosoever shall, being armed with any offensive weapon or instrument, rob or assault with intent to rob any person, or shall together with one or more person or persons rob or assault with intent to rob any person, or shall rob any person, and at the time of or immediately before, or after such robbery, shall beat, strike or use any other personal violence to any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. Robbery when armed, and robbery by numbers attended with violence. Punishment. 1 Vic. c. 87. § 3.

XV. AND IT IS HEREBY ENACTED, that whosoever shall accuse or threaten to accuse any person, of the abominable crime of buggery, committed either with mankind or with beast, or of any assualt, with intent to commit the said abominable crime, or of any attempt or endeavour to commit the said abominable crime, or of making or offering any solicitation, persuasion, promise, or threat to any person, whereby to move or induce such person to commit or permit the said abominable crime, with a view or intent, in any of the cases aforesaid, to extort or gain from such person, and shall by intimidating such person by such accusation or threat, extort or gain from such person any property, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as Obtaining property by accusing, or threatening to accuse of unnatural crimes. Punishment.

(1) Formerly punishable with death under § 85, 9 G 4, c. 74.

(2) See observations of Ryan C. J. on this and the three following sections, in his charge, February, 1839.

1 Vic. c. 87, § 4.

the Court shall direct for life, or for any term of years, or to be imprisoned for any term, not exceeding four years. (1)

Plundering ship in distress, &c.

XVI. AND IT IS HEREBY ENACTED, that whosoever shall plunder or steal any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize or articles of any kind, belonging to such ship or vessel, and be convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (2)

Punishment.

1 Vic. c. 87, § 8.

Robbery, or stealing from the person.

XVII. AND IT IS HEREBY ENACTED, that whosoever shall rob any person, or shall steal any property from the person of another, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct, for any term not exceeding fifteen years, nor less than ten years, or to be imprisoned for any term not exceeding three years. (3)

Punishment.

1 Vic. c. 87, § 5.

Assault with intent to rob.

XVIII. AND IT IS HEREBY ENACTED, that whosoever shall assault any person with intent to rob, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years.

1 Vic. c. 87. § 6.

Attempting to obtain property by menaces.

XIX. AND IT IS HEREBY ENACTED, that whosoever shall, with menaces or by force, demand any property of any person with intent to steal the same, shall be guilty of felony, and being convicted thereof, shall be liable to be imprisoned for any term not exceeding three years. (4)

1 Vic. c. 87 § 7.

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(1) This formerly amounted to robbery, and was punishable with death, see § 81, 9 G. 4, c. 74.

(2) Formerly punishable with death under 9 G. 4, c. 74, § 90. The provision contained in that section, "that when articles of small value be stranded or "cast on shore, and shall be stolen without circumstances of cruelty, outrage, "or violence, it shall be lawful to prosecute and punish the offender as for simple larceny," is now omitted.

(3) Before the passing of this act, robbery was in all cases punishable with death, stealing from the person with transportation for life, for years, &c. 9 G. 4, c. 74, § 80.

(4) The definition of this offence is the same as in section 80 of 9 G. 4, c. 74, the punishment only being altered. The Court formerly had the power of transporting for life, or years, &c.

XX. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to any dwelling house, any person being therein, shall be guilty of felony, and being convicted thereof, shall suffer death.

Setting fire to a dwelling house any one being within. Capital. 1 Vic. c. 89. §. 2.

XXI. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to any church or chapel, or other public place of religious worship whatsoever, or shall unlawfully and maliciously set fire to any house, stable, coach-house, out-house, ware-house, office, shop, mill, barn, or granary, or to any building or erection used in carrying on any trade or manufacture, or any branch thereof, whether the same or any of them respectively shall then be in the possession of the offender, or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Setting fire to a church or chapel, house, warehouse, &c. with intent to injure, &c.

Punishment.

1 Vic. c. 89. §. 3.

XXII. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to, cast away, or in anywise destroy any ship or vessel, either with intent to murder any person, or whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof, shall suffer death.

Setting fire to or destroying ships with intent to murder, or where life endangered. Capital. 1 Vic. c. 89. § 4.

XXIII. AND IT IS HEREBY ENACTED, that whosever shall unlawfully exhibit any false light or signal, with intent to bring any ship or vessel into danger, or shall unlawfully and maliciously do any thing tending to the immediate loss or destruction of any ship or vessel in distress, shall be guilty of felony, and being convicted thereof, shall suffer death. (2)

Exhibiting false lights to cause shipwreck, &c. Capital. 1 Vic. c. 89, §. 5.

XXIV. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to, or in any wise destroy any ship or vessel, whether the same be complete

Setting fire to or destroying ships complete or unfinished

(1) Formerly punishable with death under 9 G. 4, c. 74, § 114.

(2) The word "unlawfully," is not in the repealed clause 119, of 9 G. 4, c. 74.

or setting fire to or destroying, with intent to prejudice owner thereof, or of goods, &c. or underwriters.

or in an unfinished state, or shall unlawfully and maliciously set fire to, cast away, or in any wise destroy any ship or vessel, with intent thereby to prejudice any owner or part owner of such ship or vessel, or of any goods on board the same, or any person that hath underwritten or shall underwrite any policy of insurance upon such ship or vessel, or on the freight thereof or upon any goods on board the same, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Punishment.

1 Vic. c. 89. § 6.

Impeding any person endeavouring to save his life from ship in distress &c.

XXV. AND IT IS HEREBY ENACTED, that whosoever shall by force prevent or impede any person endeavouring to save his life from any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore (whether he shall be on board or shall have quitted the same,) shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (2)

Punishment.

1 Vic. c. 89. § 7.

Destroying any part of ship in distress, &c. or any goods or articles belonging thereto.

XXVI. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously destroy any part of any ship or vessel, which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandize or articles of any kind, belonging to such ship or vessel, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (3)

Punishment.

1 Vic. c. 89. §. 8.

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(1) This is the same as the repealed section 117, of 9 G. 4, c. 74, except as to the punishment, which was death.

(2) This is the same as that part of the repealed section 119, of G. 4, c. 74, from which it is taken, except as to the punishment, which was death.

(3) This is the same as that part of the repealed section 119, from which it is borrowed, except as to the punishment, which was death.

XXVII. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to any mine of coal, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall think fit for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (1)

Setting fire to coal mines.

1 Vic. c. 89. §. 9.

XXVIII. AND IT IS HEREBY ENACTED, that whosoever shall unlawfully and maliciously set fire to any stack of rice, corn or other grain, pulse, or sugar cane, straw, hay, or wood, or to any crop of rice, corn or other grain, or pulse or sugar cane, whether standing or cut down, or to any part of a wood, coppice or plantation of trees or valuable plants, or to any grass, fern, or other like ground produce, wheresoever the same may be growing, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be transported to such place as the Court shall think fit for life, or for any term of years, or to be imprisoned for any term not exceeding four years. (2)

Setting fire to agricultural produce, &c.

1 Vic. c 89. §. 10.

XXIX. AND IT IS HEREBY ENACTED, that if any person shall steal the whole or any part of any growing tree, sapling or shrub, or any underwood, or of any pale, post or stile, or any growing cultivated plant, root, fruit, or vegetable production, or shall unlawfully and maliciously commit any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, every such offender being convicted before a Magistrate or Justice of the Peace shall, for the first offence, forfeit and pay, over and above the amount of the

Stealing trees, &c or pales, cultivated plants, &c or committing damage, &c. to any real or personal property, public or private, punishable by summary conviction.

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(1) Although many of the clauses of the 7 & 8 G. 4, c. 30, an act for consolidating and amending the laws relating to malicious injuries, were introduced into the Indian Criminal Act, 9 G. 4, c. 74, yet § 5 of the former act, which made the setting fire to coal mines a capital offence, was omitted. The present section corresponds with § 9 of 1 Vic c. 89. The fifth section of the 7 & 8 G. 4, c. 30, is repealed; but § 9. 1 Vic. c. 89, is the same as the repealed section, except as to the punishment, which is no longer capital.

(2) Under § 123 9 G. 4, c 74, which is repealed, the Court might transport for offences committed under this section, for any term not exceeding 7 years, imprison, &c, the power of transportation for life is given by the above section.

injury done, such sum of money, not exceeding fifty rupees as to the Magistrate, or Justice of the Peace shall seem meet; and if any person so convicted, shall afterwards be guilty of any of the said offences, and shall be convicted thereof in like manner, every such offender shall, for such second offence, be imprisoned with or without hard labor, for such term not exceeding six calendar months, as the convicting Magistrate, or Justice of the Peace shall think fit. Provided always, that nothing in this section contained concerning the stealing of any property or malicious damage, injury or spoil to or upon any real property of a private nature, shall extend to the settlements of Prince of Wales' Island, Singapore, or Malacca. (1)

Not to extend to Prince of Wales' Island, &c.

XXX. AND IT IS HEREBY ENACTED, that every sum of money which shall be forfeited for the amount of any injury done (such amount in each case to be assessed by the convicting Magistrate, or Justice of the Peace) shall be paid to the party aggrieved, if known, except when such party shall have been examined in proof of the offence; And that in every case of a summary conviction under this Act, when the sum which shall be forfeited for the amount of the injury done, or which shall be imposed as a penalty by the Magistrate or Justice of the Peace, shall not be paid, either inmediately after the conviction or within such period as the Magistrate or Justice of the Peace shall, at the time of conviction, appoint, it shall be lawful for the convicting Magistrate or Justice of the Peace to commit the offender to the Common Gaol or House of Correction, to be imprisoned only, or to be imprisoned with hard labor according to the discretion of the Magistrate or Justice of the Peace, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both, (as the case may be,) together with the costs shall not exceed fifty rupees, and for any term not exceeding four calendar months, when the amount with costs shall not exceed one hundred rupees, and

Forfeitures for injury done, how to be applied.

Penalty for non payment.

(1) The provisions of this section are similar to those of 7 & 8 G. 4, c. 29, § 41, and the 7 & 8 G. 4, c. 30, § 21.

for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid, upon payment of the amount and costs. (1)

XXXI. PROVIDED ALWAYS, that where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case, no further sum shall be paid to the party aggrieved, than that which shall be forfeited by one of such offenders only. (2)

Where money forfeited by several persons.

XXXII. AND IT IS HEREBY ENACTED, that in case any person convicted of any offence punishable upon summary conviction, by virtue of this Act, shall have paid the sum adjudged to be paid together with costs under such conviction, or shall have suffered the imprisonment awarded for non-payment thereof, every such person shall be released from all further or other proceedings for the same cause. (3)

Persons convicted on summary proceedings, when to be released.

XXXIII. AND IT IS HEREBY ENACTED, that every punishment and forfeiture by this Act imposed, on any person maliciously committing any offence, shall equally apply, and be enforced, whether the offence shall have been committed from malice conceived, against the owner of the property, in respect of which it shall be committed, or otherwise. (4)

Malice against the owner of property not essential to the offence.

XXXIV. AND IT IS HEREBY ENACTED, that it shall not be necessary in any proceeding, either for theft or for malicious injury, spoil, or damage, to or upon any property dedicated to public use or ornament, to allege the same to be the property of any person. (5)

When not necessary to allege property to be in any person.

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(1) See 7 & 8, G. 4, c. 30, § 24. and Ibid § 32, 33.

(2) Taken from 7 & 8 G. 4, c. 30. § 32.

(3) See 7 & 8 G. 4, c. 30. § 26.

(4) The same provisions in 9 G. 4, c. 74. § 124, taken from 7 & 8 G. 4, c. 30, § 25.

(5) See 7 & 8 G. 4, c. 29, § 44.

Word "property" what to include. term "dwelling house," how to be construed.

XXXV. AND IT IS HEREBY ENACTED, that the word "property" shall throughout this Act, be deemed to include every thing included under the words "chattel, money or valuable security," in the said statute made and passed in the ninth year of the reign of his late Majesty, King George 4th aforesaid—and that the term "dwelling house" shall have the same construction as in the same statute. (1)

Principal in second degree and accessary *before* the fact in felony under this Act, punishable as principal.

Accessary *after* the fact how punishable.

XXXVI. AND IT IS HEREBY ENACTED, that in the case of every felony punishable under this Act, every principal in the second degree and every accessary before the fact, shall be punishable with death or otherwise in the same manner as the principal, in the first degree, is by this Act punishable. And every accessary after the fact to any felony punishable under this Act (except only a receiver of stolen property) shall on conviction, be liable to be imprisoned for any term not exceeding two years. (2)

When imprisonment awarded. Court may add hard labour and solitary confinement.

XXXVII. AND IT IS HEREBY ENACTED, that where any person shall be convicted under this Act, for any offence punishable under this Act, for which imprisonment may be awarded, it shall be lawful for the Court to sentence the offender to be imprisoned and kept to hard labor, and also to direct that the prisoner be kept in solitary confinement for such a period or periods of the imprisonment, as to the Court, in its direction, shall seem meet, not exceeding one month at a time, or three months in any one year. (3)

Natives of India not to be transported to certain places.

XXXVIII. AND IT IS HEREBY ENACTED AND PROIVDED, that it shall not be lawful for any Court, under the authority of this Act, to order the transportation of any person, being a native of the *East Indies*, and not born of European parents, to the Eastern Coast of New South Wales, or any of the Islands adjacent thereto. (4)

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(1) See § 79 and 86 9. G. 4, c. 74. Similar provisions in 1 Vic c. 86. § 9. Ibid c. 87 § 12.

(2) This provision the same as 1 Vic. c. 85. § 7. Ibid. c. 86. § 6. Ibid. c. 87. § 9. Ibid. c. 89. § 11.

(3) This provision the same as 1 Vic. c. 85. § 8. Ibid. c. 86. § 7. Ibid. c. 87. § 10. Ibid c. 89. § 12.

(4) Similar provisions in 39 & 40, G. 3, c. 79, now repealed, and in 9 G. 4, c. 74. § 30.

ACT No. XXXII OF 1838.

Passed by the Hon'ble the President of the Council of India in Council, on the 10th December, 1838.

I. IT IS HEREBY ENACTED AND DECLARED, that all powers whatever, in criminal cases, which by virtue of any law now in force, may be exercised by two Justices of the Peace within and for the provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, may be exercised by one such Justice. (1)

All powers in criminal cases now exercised by two Justices of the Peace for Bengal, &c. may be exercised by one. (1)

II. AND IT IS HEREBY ENACTED, that it shall be lawful for any one such Justice to issue a warrant of distress, for the recovery of arrears of assessment, accruing under the Act of Parliament, 33 Geo. 3, cap. 52, and every such warrant shall have the same force, as if it were under the hands and seals of two such Justices.

Warrant of distress for arrears of assessment by one Justice to be of the same force as if issued by two.

III. AND IT IS HEREBY ENACTED AND DECLARED, that all such powers heretofore exercised, and warrants issued by one such Justice of the Peace, shall be deemed legal and valid, as if the same had been exercised or issued by two such Justices.

All such powers heretofore exercised by one Justice, to be valid as if by two.

ACT No. II OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 4th February, 1839.

I. IT IS HEREBY ENACTED, that in all cases of fines, by which offenders are or may be punishable by any Magistrate,

Fines by magistrates under

(1) See Act No 4, of 1835, and note *ante* 319, and Act No. 21, of 1839, *post*. See also the Commissions of the Peace in Appendix.

acts of Government if no other means of enforcing payment provided, may be levied by warrant of magistrate, by distress and sale of goods in his jurisdiction,

if no property found, he may commit offender to prison, and hard labor for 2, 4, or 6 months, as the case may be.

according to the provisions of any Act heretofore passed, or which shall hereafter be passed by the Governor General of India in Council, it shall be lawful, in case of non-payment, if no other means for enforcing the payment are or shall be provided by such Act, or otherwise, for the Magistrate, by warrant under his hand, to levy the amount of such fine by distress and sale of any goods and chattels of the offender, which may be found within the jurisdiction of such Magistrate, and if no such property shall be found within such jurisdiction, then it shall be lawful for every such Magistrate by warrant under his hand, to commit the offender to prison, there to be imprisoned only or to be imprisoned and kept to hard labor, according to the discretion of such Magistrate, for any term not exceeding two calendar months, where the amount of the fine shall not exceed 50 rupees, and for any term not exceeding four calendar months, where the amount shall not exceed 100 rupees, and for any term not exceeding six calendar months, in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount.

When offenders punishable by fine, or imprisonment, and amount or time not specified, fine not to exceed 200 rupees, nor term six months.

II. AND IT IS HEREBY ENACTED, that in all cases, in which offenders are or may be punishable by any Magistrate, with fine or imprisonment, or both, according to the provisions of any Act heretofore passed, or which shall hereafter be passed, by the Governor General of India in Council, and where the extreme amount of the fine or imprisonment is not specified, it shall not be lawful for the Magistrate to impose any fine exceeding 200 rupees, or to imprison the offender for any term exceeding six months.

When offenders punishable by fine, magistrate may receive proof on oath or affirmation.

III. AND IT IS HEREBY ENACTED, that in all cases in which offenders are or may be punishable by fine, before a Magistrate, according to the provisions of any Act, heretofore passed, or which hereafter shall be passed by the Governor General of India in Council, it shall be lawful for the Magistrate, and he is hereby required to receive proof of the commission of the offence upon oath, or upon solemn affirmation, in cases where a solemn affirmation is receivable by law, instead of an oath.

IV. AND IT IS HEREBY DECLARED AND ENACTED, that in this Act, and in all Acts heretofore passed by the Governor General of India in Council, the terms "fine" and "fines" shall extend to all "penalties" and "forfeitures," and the term "Magistrate" shall extend to all "Joint Magistrates," "Persons lawfully exercising the powers of a Magistrate," and "Justices of the Peace."

definition of terms "fine" and "magistrate" in this and all former acts.

ACT No. III. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 18th February, 1839.

IT IS HEREBY ENACTED AND DECLARED, that within the British territories, under the Government of the *East India* Company, no person whatever is or shall be, by reason of place of birth, or by reason of descent, in any proceeding whatever, connected with arrears or exactions of rent, excepted from the jurisdiction of the Revenue Courts, any thing in Act No. XI of 1836, (1) contained notwithstanding.

No person by reason of place of birth, &c. excepted from jurisdiction of Revenue Courts in matters connected with arrears of rent.

II. AND IT IS HEREBY ENACTED, that no such proceeding which may have been instituted before the passing of this Act, in any such Court, and no decree which may have been passed before the passing of this Act in any such proceeding by any such Court, shall be treated as invalid by reason of the place of birth, or by reason of the descent of any party to such proceeding, or to such decree.

No such proceeding instituted before this Act, to be invalid by reason of place of birth, &c. of any party.

III. AND IT IS HEREBY ENACTED, that within the said territories, no person whatever shall, by reason of place of birth, or by reason of descent, be in any civil proceedings whatever, connected with arrears or exactions of rent, excepted from the jurisdiction of the Courts of the Moonsiffs.

No person, by such reason, to be in civil proceedings as to arrears, excepted from jurisdiction of Moonsiff's Court.

(1) See this Act, *ante* 326.

ACT No. VI OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 18th March, 1839.

Preamble. Bank of Bengal.

I. THE existing charter of the Bank of Bengal having been found, in many respects, inconvenient and imperfect, the members of the said Corporation have, by their Directors, applied to the Governor General of India in Council, for the amendment thereof, by a new charter or act of incorporation, tendering the surrender thereupon, of the said charter, and the Governor General in Council having assented to such surrender, and to the continuance of the said corporation as hereinafter declared;—It is hereby enacted, that from the 1st day of May next, after the passing of this Act, the charter of the said Bank of Bengal bearing date the 29th May, 1823, and the Acts No. XIX of 1836, and No. XXIV of 1838, relating thereto, shall respectively cease to have effect; and the same are hereby, from that day, cancelled, save as to such particulars as are hereinmentioned or referred to.

Charter of 29th May 1823, and Acts No. 19 of 1836 and 24 of 1838, cancelled, except, &c.

Proprietors to continue to be a corporation by name of the Bank of Bengal.

II. AND IT IS HEREBY ENACTED, that the persons, who, at the time of the determination of the said charter and acts aforesaid, shall, under the provisions of the said charter and acts, be the proprietors of the capital stock of the said Bank of Bengal, shall notwithstanding the determination of the said charter and acts continue to be a corporation body corporate and politic, by the name of the Bank of Bengal, with perpetual succession to them and their successors, proprietors for the time being of the said Bank, as hereinafter mentioned, and to possess and enjoy all the rights, privileges, and immunities, incident by law to a corporation aggregate.

To possess all rights, incident by law to a corporation aggregate.

All property and securities now held by the Bank continued.

III. AND IT IS HEREBY ENACTED, that all property, and securities for property, claims and demands whatsoever now vested in or held by the said Bank of Bengal, under and by virtue of said charter and acts, shall,

immediately, on the determination of the said charter, devolve on and become vested and continued in the Bank of Bengal, so continued and incorporated by this Act as aforesaid; and that the said Bank of Bengal so continued and incorporated as aforesaid, shall be subject to all debts, demands, claims and liabilities, outstanding against the said Bank, at the time of such determination of its said charter as aforesaid; and that no suit or proceeding at law or in equity then pending, shall cease or abate in consequence of such determination of the said present charter, and of such renewal and continuance of the said Bank by virtue of this Act.

Bank to be subject to all subsisting debts, &c.

Suits not to abate by reason of this act.

IV. AND IT IS HEREBY ENACTED, that the said Bank so renewed and continued shall, and may sue and be sued by its corporate name aforesaid, and shall and may have and use such common seal as the Directors of the said Bank shall, from time to time, appoint, and shall be competent to acquire and hold, either absolutely, or conditionally, for a term, or in perpetuity, any description of property whatever, and to transfer and convey the same.

Bank may sue and be sued by its corporate name.

Seal

may acquire and hold and transfer any description of property.

V. AND IT IS HEREBY ENACTED, that the capital stock of the said Bank, as constituted under the said present charter and acts shall, on the determination of the same, by virtue of this Act, continue to be the capital stock of the said Bank, so renewed and continued as aforesaid; Provided however, that it shall be in the power of the Governor General of India in Council, from time to time, by resolution notified in the *Calcutta Gazette*. to authorize the said capital stock to be increased, and to make such order and direction for the opening of subscriptions towards such increase of capital as to him may seem fit, giving due notice thereof to the proprietors of the said Bank for the time being, and allowing to them a period of not less than twelve months, to fill up such subscription themselves, and likewise to prescribe in what manner and form the proprietors shall subscribe and pay into the said Bank, the proportions of new stock, to which they may respectively be entitled; and to make such order and direction, as to him, the said Governor General in Council, may seem fit, for

Capital stock to continue in renewed Bank.

Governor General in Council may authorize it to be increased.

Notice to be given to proprietors;

twelve months to be allowed to fill up subscriptions themselves.

how to pay same.

May make such order as may

seem fit for disposal of amount of new stock not subscribed for, &c.

the disposal of the amount of new stock that may not be subscribed for and paid up in the manner and form so prescribed.

Preamble.

Act No. 19, of 1836.

Act No. 24, of 1838.

VI. "AND WHEREAS, the capital stock of the said "Bank, which by the said Act No. XIX of 1836, was fixed "at seventy-five lakhs of rupees, divided into 1,875 shares "of four thousand rupees each, has, by the resolution of the "President of the Council of India in Council, issued and "notified to the proprietors, on the 17th October, 1838, in "conformity with Act No. XXIV of 1838, been ordered to "be increased by one-half; and whereas a book is now open "for subscriptions, and payment is now being made of such "increased capital in the manner and under the terms and "conditions authorized in the said Act No. XXIV of 1838, "and prescribed in the said order and notice of the President in Council." It is therefore hereby enacted, that the capital stock of the said Bank shall, on the said 1st May next, when this Act shall take effect for the re-incorporation of the said Bank, consist of the said sum of seventy-five lakhs of Company's rupees, together with such further amount as shall, on that date have been subscribed and paid into the Bank of Bengal, under the order and notice referred to; and the further subscriptions and payments of capital authorized and ordered as abovementioned, shall continue to be received in the manner provided in the said order and notice of the President in Council, and shall be added to the capital stock of the Bank as received, accordingly as is prescribed in the said order passed under the authority of the said Act. And the capital stock held by the Bank of Bengal on the said 1st May next, together with the further capital that may be subscribed and paid up as above after that date, shall be divided into shares of four thousand rupees each, or into quarter shares of one thousand rupees each, in the manner declared and provided by Act. No. XIX of 1836; and the shares of the said capital that may be then registered in the name of the Governor General of India in Council, shall be the property of the said Governor General of India in Council for the time being, on behalf of the *East India* Company, together with any new shares or quarter shares, for which subscription

From 1st May 1839, capital stock of the Bank to consist of 75 lakhs together with further amount then subscribed and paid into Bank;

The further subscriptions authorized, to be received and added to the capital stock.

Capital stock and additions to be divided into shares of 4,000 rupees or quarter shares of 1,000 rupees.

Shares registered in name of Governor General in Council to be

may be made on account thereof, under the option reserved to the said Governor General of India in Council, to that effect in the said order and notice; and the shares and quarter shares registered as belonging to individual proprietors, shall continue to be the property of such proprietors; and the said proprietors shall respectively be, in the proportion of their several interests, proprietors of the Bank of Bengal, as re-incorporated by this Act, and shall hold and enjoy in respect to their several shares and interests the same precise rights and privileges, as regards the subscriptiou to fresh stock, under the order and notice referred to, as they would have done if the Bank of Bengal had continued under the charter and acts referred to, the re-incorporation of the said Bank by this Act notwithstanding.

held on behalf of the East India Company.

Shares and interests of individual proprietors to continue as before.

To enjoy same rights, as regards subscription to fresh stock, as if the Bank had continued under charter.

VII. AND IT IS HEREBY ENACTED, that no proprietor shall be allowed to increase his share in the capital stock of the said Bank, beyond the amount of one lakh and sixty thousand rupees, excepting on occasion of the present or of any future increase being made to the capital stock of the said Bank, under the authority of the Governor General in Council, in the manner prescribed in sections V and VI of this Act, in which case any proprietor holding stock to the full amount of one lakh and sixty thousand rupees, shall, notwithstanding, be entitled to subscribe to the increased capital stock in a rateable proportion; and excepting any addition to his interest in the said capital stock arises from succession, bequest or marriage.

No proprietor to increase his share beyond one lakh and 60,000 rupees, except on increase to capital,

and except addition by succession, &c.

VIII. AND IT IS HEREBY ENACTED, that a certificate signed by three Directors of the said Bank, shall be delivered to the proprietor or proprietors of all the said shares of the capital stock of the said Bank, upon demand made by the holder of such share, and that any person who is a proprietor of more than one such share, may at his option demand a certificate for each of his shares, or one certificate for all his shares, or several certificates, each of which may be for any number of his shares.

Proprietor entitled to demand a certificate signed by three directors of all his shares,

and may require one, or several certificates.

IX. AND IT IS HEREBY ENACTED, that the said share or shares of the capital stock of the said Bank shall be of

Shares to be of

the nature of personalestate transferable by endorsement,

the nature of personal estate of the proprietors thereof respectively, and that the same shall be transferable by endorsement to be made on such certificates thereof respectively, under the hand of the proprietor or proprietors, or his, her, or their attorneys, duly authorized, which endorsement shall specify the name of the person or persons to whom the said transfer shall be made, provided that no such endorsement shall be effectual to transfer any such share or shares, until such endorsement shall have been registered at the Bank of Bengal, and such registration shall have been noted on such endorsement under the hand of an officer appointed for that purpose, by the Directors of the said Bank.

endorsement to specify the name of persons to whom transfer made,

not valid until registered at the Bank, &c.

Corporation so renewed to consist of registered proprietors, and no other persons.

X. AND IT IS HEREBY ENACTED, that the said corporate body, so renewed and continued as aforesaid, shall consist and be composed of the registered proprietors for the time being, of the said shares of the capital stock of the said Bank, and of no other person or persons whatsoever.

The business to be managed by 9 directors, 3 to be appointed, by Gov Genl. in C, and 6 by a general meeting of proprietors, how removable.

XI. AND IT IS HEREBY ENACTED, that the business of the said Bank shall be managed by nine Directors, of whom three shall be appointed and removeable by the Governor General of India in Council, and the remaining six shall be elected by a general meeting of the proprietors of the said Bank, and removeable by vote of the majority of a general meeting of the said proprietors.

Directors at determination of charter, to continue such in renewed Bank.

XII. AND IT IS HEREBY ENACTED, that the persons who, at the time of such determination of the said present charter and acts as aforesaid, shall be Directors of the said Bank, shall thereafter continue to be Directors of the said Bank, so renewed and continued as aforesaid.

Two of directors elected by proprietors to go out by rotation every year Director so going out cannot be re-elected at the election which takes

XIII. AND IT IS HEREBY ENACTED, that two of the six Directors elected and to be elected by the said proprietors, shall in rotation go out of office on the second Monday in the month of December in every year, on which day in every year a general meeting of proprietors shall be held for the election of two Directors in their stead; Provided always, that any Director going out by rotation

as aforesaid, may not be re-elected at the election which takes place thereupon; Provided also, that the rotation existing at the time of such determination as aforesaid, of the said present charter and acts, shall continue to be observed.

place thereupon.

XIV. AND IT IS HEREBY ENACTED, that in case of the death, resignation, or absence from Calcutta for more than three months, or removal as aforesaid of any Directors, elected or to be elected by the said proprietors, the Directors shall call a general meeting of the proprietors, to be held within fifteen days, for the purpose of chusing a successor, and such successor shall come into the same place, in the rotation abovementioned, in which the Director was.

In case of death &c. of Director elected by proprietors, directors to call a general meeting of proprietors for chusing a successor.

XV. AND IT IS HEREBY ENACTED, that no person shall be capable of serving as a Director by election of the said proprietors, who shall not be proprietor in his own right, and unincumbered, of three shares of twelve thousand rupees, of the capital stock of the Bank of Bengal, or who shall be a Director of any other Bank, issuing notes payable on demand within the town or suburbs of Calcutta.

No person eligible as a director by election of proprietors, unless a proprietor of three shares of 12,000 rupees, or if a director of any other bank, &c.

XVI. AND IT IS HEREBY ENACTED, that at general meetings of the proprietors, every election, and other matter in question, shall be decided by a majority of votes, and that no person shall be allowed to vote at any such meeting in respect of any share of the said capital stock acquired by transfer or purchase or otherwise than by act of law, unless such transfer shall have been completed six months at the least, before the time of tendering such vote.

At general meetings matters in question to be decided by a majority of votes.

Who entitled to vote.

XVII. AND IT IS HEREBY ENACTED, that at all such general meetings, the proprietors shall vote according to the follwing scale.

Scale of votes at general meetings.

1	Share	of 4,000 Rs.	shall entitle to	1	vote.
5	"	"	"	2	"
10	"	"	"	3	"
15	"	"	"	4	"
20	"	"	"	5	"

30 share of 4,000 Rs. shall entitle to 6 votes.
40 „ „ „ 7 „

and no proprietor shall be entitled to more than seven votes.

Governor General in Council may vote by proxy at such meetings;

Proxy entitled to 7 votes.

XVIII. AND IT IS HEREBY ENACTED, that it shall be lawful for the Governor General of India in Council, to give a proxy in writing, signed by one of the Secretaries to Government, to any person whom the Governor General may appoint to attend any general meeting of the proprietors, and that the holder of such proxy shall be entitled to give seven votes upon all matters or questions, that may be submitted to such meeting, excepting upon the election or removal of such Directors, as are elected by the said proprietors.

Proprietor entitled to vote, or his attorney may appoint proxy.

Proxy entitled to vote as authorized.

XIX. AND IT IS HEREBY ENACTED, that any proprietor or proprietors, entitled to vote at any general meeting, may give a proxy in writing, either general or special, under his, her or their hand, or the hand of his, her or their attorney, duly authorized, to any other proprietor, and that such proxy shall be produced at the time of voting, and that such proxy shall entitle the person, to whom it is given, to vote on such matters as shall be authorized by the tenor of such proxy.

President to be chosen annually by Directors.

Vacancies to be filled up.

During vacancy or absence senior director to be Vice President,

Casting voice.

XX. AND IT IS HEREBY ENACTED, that at the first meeting of the Directors in every year, they shall chuse a President from among themselves, and if the office of President shall become vacant, they shall, at their next meeting, chuse a successor for the remainder of the current year, and that during any vacancy or in the absence of the President, the senior Director shall be Vice-President for the time, and that such President or Vice-President shall have the casting vote in all cases of an equal division of votes at meetings, either of Directors or proprietors.

Three directors necessary to form a board, by weekly rotation.

Not less than

XXI. AND IT IS HEREBY ENACTED, that the presence of at least three Directors shall be necessary to form a board for the transaction of business, and that the said Directors shall establish a weekly rotation among themselves, so that not less than three Directors may attend

every meeting of Directors; Provided always, that nothing herein contained, shall be held to preclude any Director from attending any meeting of Directors.

three to attend every meeting.

XXII. AND IT IS HEREBY ENACTED, that all accounts of the said Bank, and all instruments not under seal, whereby the said Bank can in any manner be bound, except the cash notes of the Bank, shall be signed by three Directors, and shall be of no validity unless so signed; and that the seal of the said Bank thall not be affixed to any instrument except in the presence of three Directors, who shall sign their names to the instrument in token of their presence, and that such signing shall be independent of the signing of any person who may sign the instrument as a witness, and that unless so signed by three Directors such instrument shall be of no validity.

All accounts of Bank and instruments not under seal, except cash notes, to be signed by three directors, otherwise invalid.

Seal not to be affixed except in presence of, and instrument signed by three directors otherwise invalid.

XXIII. AND IT IS HEREBY ENACTED, that the said Directors shall have power to appoint such officers as may be necessary to conduct the business of the said Bank, and to remove any officer of the said Bank, and to fix the salaries of such officers, provided that the whole expence of the establishment of the said Bank shall not, in any one year, exceed sixty thousand rupees, without previous authority from the general meeting of the proprietors.

Directors to appoint and remove officers and fix salaries, expence of establishment not to exceed sixty thousand rupees annually, &c.

XXIV. AND IT IS HEREBY ENACTED, that no person who shall hold the office of Secretary, Treasurer, head Accountant or Khazanchee of the Bank of Bengal, shall engage in any other commercial business, either on his own account, or as agent for any other person, or persons or act as a broker for the sale or purchase of Government securities; and that every person appointed to any one or more of the said offices, shall give security to the Directors for the faithful discharge of his duty in the sum of fifty thousand rupees.

Secretary and other officers may not engage in business on their own account, or otherwise

to give security in 50,000 rs.

XXV. AND IT IS HEREBY ENACTED, that the said Bank of Bengal shall not be engaged in any kind of business except the kinds of business hereinafter specified, that is to say—

Business of Bank of Bengal limited to such transactions as herein mentioned.

1. The discounting of negotiable securities.

2. The keeping of cash accounts.

3. Buying and selling of bills of exchange payable in India.

4. The lending of money on short loans.

5. The buying and selling of bullion.

6. The receiving of deposits.

7. The issuing and circulating of cash notes and Bank post bills.

8. The selling of property or securities deposited in the Bank, as security for loans and not redeemed, or of property or securities recovered by the Bank in satisfaction of debts and claims.

Directors not to discount security, nor make loan unless cash in Bank equal to one fourth of claims payable on demand.

XXVI. AND IT IS HEREBY ENACTED, that the Directors of the said Bank shall discount no negotiable security, and make no loan unless the amount of cash in possession of the said Bank, and immediately available, shall be equal to at least one-fourth of all the claims against the said Bank, outstanding for the time being, and payable on demand.

Directors not to discount securities or lend money for longer periods than three months.

Nor advance on Bank shares, mortgage, or on security of land, or on negotiable security of any individual or firm, without the responsibilities of two persons or firms unconnected in general partnership.

Not to be in advance to any person beyond three lakhs, except, &c.

XXVII. AND IT IS HEREBY ENACTED, that the Directors of the said Bank of Bengal shall not discount any negotiable securities, which shall have a longer period to run than three months, or lend any money for a longer period than three months, and that they shall make no loan or advance on any Bank share or certificate of shares, nor on mortgage, or in any other manner on the security of any lands, houses, or immoveable property, nor on any negotiable security of any individual or partnership firm, which shall not carry on it the several responsibilities of at least two persons, or firms, unconnected with each other in general partnership; nor be in advance at one and the same time to any individual or partnership firm either by way of discount, loan, or in any other manner (saving by loans upon the deposit of Government securities, or goods not perishable as hereinafter mentioned) beyond the amount of three lakhs of Company's

rupees: Provided always, that advances upon bills of exchange accepted by the Government, or upon other Government obligations shall not be considered as an advance within the meaning of this restriction.

What not considered an advance,

XXVIII. AND IT IS HEREBY ENACTED, that the Directors of the said Bank shall make no loan, other than such loans as are described in the section next preceding, except on deposit of public securities to the full amount of the loan, and which public securities shall be so endorsed or transfered as to put them at the absolute disposal of the said Bank of Bengal, or on deposit of goods, not of a perishable nature, and of estimated value exceeding the amount of the loan by at least one-fourth.

Directors to make no loan other than before described except on public securities to the full amount, or on goods, not perishable, of value exceeding loan by one-fourth.

XXIX. AND IT IS HEREBY ENACTED, that the said Bank shall not be at any time in advance to the Government more than seven lakhs and a half of Company's rupees: Provided always, that the holding of Government securities or of bills of exchange drawn upon the Government, or of other Government acceptances or obligations derived to the said Bank from individuals and not overdue, shall not be construed as being in advance to the Government, within the meaning of this section.

Bank not to be in advance to the Government more than seven lakhs and a half.

What not to be construed as being in advance.

XXX. AND IT IS HEREBY ENACTED, that the Directors of the said Bank of Bengal shall not suffer any person or persons, or body corporate, keeping cash with the said Bank of Bengal, to overdraw his, her or their account.

No person allowed to overdraw his account.

XXXI. AND IT IS HEREBY ENACTED, that the said Bank of Bengal may issue promissory notes, payable either on demand or at a date not exceeding thirty days after sight, which notes shall and may be signed on behalf of the said Bank, by such person as the Directors of the said Bank may appoint or authorize in that behalf: Provided always that the total amount of such notes in circulation at any one time shall not exceed two crores of rupees: And provided also, that no such note shall be for a smaller amount than ten rupees.

Bank may issue notes payable on demand or not exceeding 30 days' sight.

Not more than two crores of rupees to be in circulation at one time,

notes not to be for less than ten rupees.

Bank not to issue or negotiate any note, &c. without the limits of India.

XXXII. AND IT IS HEREBY ENACTED, that it shall not be lawful for the said Bank to make, issue or negotiate any note, bill or other instrument containing any promise, undertaking or order for the payment of money, elsewhere than within the limits of India.

Directors may receive goods, not perishable, and contract for safe keeping.

XXXIII. AND IT IS HEREBY ENACTED, that it shall be lawful for the Directors of the said Bank of Bengal to receive in deposit goods, not of a perishable kind, and to contract for the safe keeping of the same.

Books to be balanced on the 30th June and 21st December A yearly settlement of balance signed by majority of directors to be transmitted to Government, who may require information or documents from directors at pleasure.

XXXIV. AND IT IS HEREBY ENACTED, that the Directors of the said Bank shall cause the books of the said Bank to be balanced on the 30th day of June, and the 31st of December, in every year, and that a settlement of the balance on every such day, signed by a majority of the said Directors, shall be forthwith transmitted to one of the secretaries to the Governor General of India in Council, and that the Governor General of India in Council shall at all times be entitled to require of the said Directors any information touching the affairs of the Bank, and the production of any documents of the said Bank, and that the said Directors shall comply with every such requisition.

Account of profits to be taken half yearly on 1st January and 1st July.

Dividend to be made and amount to be determined by directors,

who under control of proprietors, may set apart 5 per cent on Capital as a reserve.

XXXV. AND IT IS HEREBY ENACTED, that an account of the profits of the said Bank shall be taken half yearly, on the 1st day of January and the 1st day of July, in every year, and that a dividend thereof shall be made so soon thereafter as conveniently may be, and that the amount of such dividend shall be determined by the Directors of the said Bank, on the ground of the actual profits made by the said Bank, during the six calendar months preceding the day up to which such half yearly account shall be taken; provided that the said Directors, subject to the control and sanction of the proprietors at their general meetings, shall have power when they see fit to set apart from such profits a sum not exceeding five per cent. on the capital stock of the Bank as a reserve against contingencies.

Annual general meeting of pro-

XXXVI. AND IT IS HEREBY ENACTED, that on the first Monday of the month of August in every year, a

general meeting of the proprietors of the capital stock of the said Bank shall be held, at which the Directors of the said Bank shall submit to the said proprietors, a statement of affairs of the said Bank, made up to the preceding 30th of June, and such general meeting shall be competent to pass resolutions, and frame rules and directions, relative to affairs and conduct of the said Bank, which shall be binding on the Directors and officers of the Bank, and on the proprietors thereof, until rescinded or modified respectively, by any subsequent general meeting.

prietors to be held on first Monday in August.

When statement of affairs to be submitted to proprietors.

Such meeting competent to pass resolutions, &c. binding till rescinded, &c. by a subsequent meeting.

XXXVII. AND IT IS HEREBY ENACTED, that any three of the said Directors of the said Bank, or any ten proprietors of the capital stock of the said Bank, may at any time convene a general meeting of the proprietors, upon giving fifteen days' previous notice of such meeting, and of the purpose or purposes for which the same shall be convened as well to the Directors of the said Bank for the time being, as also by public advertisement in the *Calcutta Gazette*.

How general meetings may be convened.

XXXVIII. AND IT IS HEREBY ENACTED, that it shall be lawful for the Bank of Bengal, with the sanction of the Governor General of India in Council, to establish Branch Banks at such places, and under such rules and restrictions as shall be determined by the proprietors at their general meetings: Provided however, that such Branch Banks when so established, besides being subject to the rules and restrictions that may be imposed by the proprietors, and to the control and orders of the Directors of the Bank at Calcutta, shall be bound by the same rules as to the description of business in which they are to engage, and the manner of conducting such business, and likewise in respect to the issue of notes payable on demand and the retention of cash to meet the same, and in all transactions and matters herein above referred to, as are prescribed for the Bank of Bengal by this act.

Branch Banks with sanction of Governor General may be established as determined by proprietors at general meetings, and subject to rules of proprietors, and control of directors,

to be bound by same rules as Bank of Bengal.

XXXIX. AND IT IS FURTHER ENACTED, that if any of the said proprietors shall become indebted to the said Bank, it shall be lawful for the said Bank to withhold payment of the dividends on the share or shares of such

If proprietors become indebted to Bank dividends on shares registered

as their own property and not in trust, may be withheld, until payment.

proprietor, registered as his or her own property, and not as held in trust, or as executor, or administrator, until payment of such debt, and to apply such dividends towards payment thereof, and that after demand and default of payment, and notice in that behalf given either to such proprietor, or his, or her constituted agent, or by public advertisement in the *Calcutta Gazette*, it shall be lawful for the said Bank to refuse registration of the transfer of any such share or shares of such proprietor, until payment of such debt; and if the same shall remain unpaid for the space of six months after such notice, to advertise for public sale, and to sell such share or shares or so many as may be necessary, and to apply the proceeds thereof towards payment of such debt with interest at the rate of six per cent. per annum, paying over the surplus, if any, to such proprietor, or to his or her lawful representative.

Bank may refuse registration of transfer of shares until payment.

when and how they may sell same and apply proceeds.

Bank to continue until 1st of May 1846, and until dissolved, or modified.

XL. AND IT IS FURTHER ENACTED, that the said Bank shall continue as hereby constituted, until the 1st day of May, which will be in the year of our Lord 1846, shall thereafter continue in like manner, until duly dissolved or modified: Provided however, that after the said 1st day of May 1846, the said Bank shall not, except upon the application or by the consent of the proprietors of the said Bank be dissolved, or anywise modified without previous notice of twelve months at the least being given to the Directors of the said Bank for the time being, of such intended dissolution or modification: Provided also, that in the event of the said Bank at any time suspending cash payments, the benefits granted to the said Bank by the present act of incorporation shall be thenceforth forfeited.

Not to be dissolved or modified except by consent of proprietors without 12 months' notice to directors.

Proviso, in case of suspending cash payments, benefits of act forfeited.

ACT No. XXI. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 26th August, 1839.

An Act for the trial of prisoners charged with the commission of certain petty offences in the town of Calcutta and on the river Hooghly.

Preamble.

I. WHEREAS IT IS EXPEDIENT to make further provision in regard to such charges of felony, as have been usually determined by Justices of the Peace, under the authority of the Bye laws for the town of Calcutta; by preventing, as far as is consistent with the attainment of justice, any delay of trial, or inconvenience to prosecutors, witnesses and jurymen; by limiting the powers heretofore exercised by such Justices; and by subjecting their proceedings upon convictions for felony to more regular control and revision; And whereas, it is also expedient to provide the like remedy in cases of assaults committed in certain parts of the river Hooghly, without the limits of the town of Calcutta, as hath been provided in cases of assault committed within such limits:

Justices not to sentence in felonies, &c. under any Bye-Law for Calcutta and under Act 4, of 1835, or otherwise than under this Act.

IT IS THEREFORE HEREBY ENACTED, that it shall not be lawful for any Justices or Justice of the Peace to sentence any person charged with the commission of any felony within the town of Calcutta, or with the possession of stolen property within the same town, by virtue of any Bye-law for the town of Calcutta, or by virtue of such Bye-law and under Act IV of 1835, or otherwise than according to the provisions of this Act; and the sixth section of a certain rule, ordinance and regulation, entitled "A rule, ordinance and "regulation for the good order and civil Government of the "settlement of Fort William in Bengal, passed in Council "on the 26th day of July, in the year of our Lord 1814, and "registered in the Supreme Court on the 11th day of No-"vember in the same year," is hereby repealed. (1)

Repeals 6th sec. of Regulation of 26th July 1814.

(1) See abstract of this Regulation in Appendix, p. cxi. The effect of this Act will no doubt be, that a much greater number of cases than heretofore will be sent up for trial at Sessions.

One Justice may try cases of simple larceny, in Calcutta.

II. AND IT IS HEREBY DECLARED AND ENACTED, that all persons charged with the commission of simple larceny, within the town of Calcutta, may be tried by any Justice of the Peace for the said town, provided the value of the property which the prisoner is charged with having stolen, does not, according to the belief of such Justice, exceed twenty rupees.

Justice not empowered to imprison for more than six months or to transport.

III. AND IT IS HEREBY PROVIDED, that such Justice of the Peace shall not have power to sentence any such person to be imprisoned with or without hard labor, for a longer period than six calendar months, or to be transported.

Justice may, at his discretion, commit for trial before Court.

IV. AND IT IS HEREBY PROVIDED, that it shall be lawful for any Justice of the Peace, before whom any person is charged with the commission of any simple larceny, at his discretion, instead of trying such person himself, to commit such person for trial before her Majesty's Supreme Court of Justice in Calcutta.

Form of judgment, on conviction.

V. AND IT IS HEREBY ENACTED, that every such Justice, after trying any offender, charged with the commission of a simple larceny, shall cause his judgment to be drawn up in the follwing form of words, or in such other form of words to the same effect, as the case shall require, that is to say :

Be it remembered, that on the ——— day of ——— in the year of Our Lord ——— at Calcutta, A. B. is (*acquitted*, or *convicted*,) before me J. P. a Justice of the Peace, for the town of Calcutta, on a charge of simple larceny, for that he the said A. B. did feloniously (*here specify the alleged offence and the time and place when and where the same was committed, as the case may be*,) and I the said J. P. believe the value of the property stolen, to amount to a sum not exceeding twenty rupees, that is to say —— rupees, and I the said J. P. adjudge the said A. B. (*here state that the prsoner is to be discharged*, or *the punishment he is to suffer*, as the case may be.)

Given under my hand, the day and year first above named.

(Signed)

VI. AND IT IS HEREBY ENACTED, that once at least in every term, and oftener if required by her Majesty's Supreme Court of Justice at Calcutta, every such Justice shall transmit to her Majesty's said Supreme Court of Justice, all judgments, whether of acquittal or conviction, passed by him, together with the depositions and examinations of the witnesses and prisoners, there to be kept by the proper officer, among the records of the Court.

Justices to transmit each Term to Supreme Court, judgments of acquittal or conviction with depositions and examinations, to be there recorded.

VII. AND IT IS HEREBY ENACTED, that upon the trial of any prisoner for simple larceny as aforesaid, every such Justice of the Peace shall require the witnesses against and on behalf of the prisoner to be sworn, or to make solemn affirmation in cases where an affirmation is by law permitted, in the place of an oath, and shall cause the depositions of the witnesses and the examination of the prisoner to be reduced into writing, and every such deposition and examination shall be signed by such Justice.

On such trials before a Justice witnesses to be sworn, or to affirm, where affirmation permitted; and depositions and examinations to be reduced into writing, and signed by him.

VIII. AND IT IS HEREBY ENACTED, that upon the trial of any person charged with the commission of simple larceny before any such Justice of the Peace as aforesaid, if any person being duly summoned by such Justice shall refuse to attend as a witness, or to give evidence, he shall be liable to be punished by her Majesty's Supreme Court of Justice at Calcutta, in like manner as if he had refused to attend as a witness, or to give evidence before her Majesty's said Supreme Court of Justice.

Witnesses summoned and making default, &c. liable to be punished by Supreme Court.

IX. AND IT IS HEREBY ENACTED, that upon any conviction for simple larceny as aforesaid, the Justice of the Peace, before whom any preson shall be so committed, shall have power to order the restitution of the property stolen, if forthcoming, to the owner or his representative, and in case of its not being restored, pursuant to such order, to impose on any person, refusing or neglecting to restore the same, a fine not exceeding 20 rupees, and in default of payment, to adjudge the person guilty of such neglect or refusal, to be imprisoned for the space of one calendar month, unless the property be sooner restored.

On convictions Justices may order restitution of property, and how to be enforced,

Assaults on board ship in the river, or the mouths, within the territories, triable before any Justice of the Peace.

X. AND IT IS HEREBY ENACTED, that all persons charged with the commission of any assault or battery, on board of any merchant ship employed on sea voyages, in the river Hooghly, or the mouths thereof, being part of the territories of the East India Company, may be tried before any such Justice of the Peace, and on conviction shall be liable to be punished by a fine not exceeding one hundred rupees, to be levied and enforced in manner provided by Act II. of 1839. And all the provisions of this Act made in the case of charges of simple larceny shall, as far as they are applicable, be applied in the case of such charges of assault or battery as aforesaid.

How punishable, &c.

Act not to affect remedy by certiorari.

XI. AND IT IS HEREBY DECLARED, that nothing in this Act contained shall be construed to effect the remedy of any person aggrieved by the conviction of any Justice of the Peace through the means of the writ of certiorari.

ACT No. XXII OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 9th September, 1839.

An Act for enabling persons, charged with offences, to make their defence more effectually.

I. WHEREAS it is expedient to extend to the territories under the Government of the *East India* Company, the provisions of the statute 6th and 7th William IV, chapter CXIV.

Prisoners to be admitted on trial to make full defence by Counsel.

IT IS THEREFORE HEREBY ENACTED, that all persons, tried for any offence, in any of her Majesty's Courts of Justice, shall be admitted, after the close of the case for the prosecution, to make full answer and defence thereto, by Counsel learned in the law, or by Attorney in her

Majesty's Courts of Justice, where attornies may practise as Counsel. (1)

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(1) MEMORANDUM

As to the course of practice in consequence of the Act for allowing prisoners to defend by Counsel.

At a meeting of twelve of the Judges, for the purpose of choosing the spring Circuits of 1837, (Littledade J., Bosanquet J., and Coleridge J., being absent from indisposition,) a discussion took place as to some points which were thought likely to occur at the assizes, in consequence of the recent Act for allowing prisoners indicted for felony to make full defence by counsel: and the following seemed to be the course of practice, which the Judges present, thought it would be most advisable to adopt:—

1. That where a witness for the Crown has made a deposition before a Magistrate, he cannot, upon his cross-examination by the prisoner's counsel be asked whether he did or did not in his deposition, make such or such statement, until the deposition itself has been read, in order to manifest whether such statement is or is not contained therein; and that such deposition must be read as part of the evidence of the cross examining counsel.

2. That after such deposition has been read, the prisoner's counsel may proceed in his cross-examination of the witness as to any supposed contradiction or variance between the testimony of the witness in Court and his former deposition; after which, the counsel for the prosecution may re-examine the witness, and, after the prisoner's counsel has addressed the jury, will be entitled to the reply. And in case the counsel for the prisoner comments upon any supposed variance or contradiction, without having read the deposition, the Court may direct it to be read, and the counsel for the prosecution will be entitled to the reply upon it.

3. That the witness cannot, in cross-examination, be compelled to answer, whether he did or did not make such or such a statement before the Magistrate, until after his deposition has been read, and it appears, that it contains no mention of such statement. In that event the counsel for the prisoner may proceed with his cross-examination; and if the witness admits such statement to have been made, he may comment upon such omission, or upon the effect of it upon the other part of his testimony; or, if the witness denies that he made such statement the counsel for the prisoner may then, if such statement be material to the matter in issue, call witnesses to prove that he made such statement But in either event the reading of the deposition is the prisoner's evidence, and the counsel for the prosecution will be entitled to reply.

4. If the only evidence called, on the part of the prisoner, is evidence to character, although the counsel for the prosecution is entitled to the reply, it will be a matter for his discretion, whether he will use it or not, cases may occur in which it may be fit and proper so to do.

5 In cases of public prosecutions for felony, instituted by the Crown, the law officers of the Crown and those who represent them, are, in strictness, entitled to the reply, although no evidence is produced on the part of the prisoner.

See 7 Carr. & P. 676, and Moody's Cr Ca. res. 1. 495.

The resolutions of the Judges as to cross examining from the depositions, are binding upon the prisoner s counsel; but it seems that the Judge who tries

Also in cases of conviction by a Justice of the Peace to be heard by

II. AND IT IS HEREBY DECLARED AND ENACTED, that in all cases of summary conviction, by a Magistrate or Justice of the Peace, exercising jurisdiction within the limits of any of her Majesty's Supreme Courts, persons accused

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a case may, if he think fit, notwithstanding those resolutions, himself question a witness as to any discrepancy which appears between his deposition and his evidence on the trial. Whether, if he does so, and thereby introduces new facts in evidence, the counsel for the prosecution will have the right of reply, Query? If a witness admits, that, when before the Magistrate, he was cross examined by the prisoner's solicitor, the prisoner's counsel may question him as to the answers he gave, if it appears to the Judge who is trying the case, that no cross-examination is returned by the Magistrate. Rex v Edwards & Woodcock, Central Criminal Court 1837, 8 Carr. & P. 26, before Littledale and Coleridge. J., and Mr Recorder Law;

(But see the remarks of the reporters at the end of this report and the following cases).

In this case the prisoners were indicted for the wilful murder of a lad at sea, by a series of acts of cruelty.

During the cross examination of one of the witnesses for the prosecution, C. Phillips, for the prisoner, said, "I propose to put the depositions into the hands "of the witness, and to ask him if the signature to his deposition was actually "written by himself, after it had been read over to him. I also propose that he "should refresh his memory by reading what he said before the Magistrate, and "to point out to him the discrepancies between his present evidence and the de-"positions, without being compelled to put such depositions in evidence for the "defence, and thereby give a reply to the counsel for the prosecution. My "reason for making this proposition is, because certain rules or resolutions have "appeared in print, purporting to have been agreed on by the Judges, and I wish "to have the opinion of your lordships, whether those rules are imperative and "binding, or whether they are to be considered as open to argument. Neither of "your Lordships appear to have been present at the meeting of the Judges when "the rules were adopted"

Coleridge, J. I do not think that those regulations are to be considered as express rules laid down by the Judges. The introductory paragraph states, that the regulations only seemed to the Judges to be advisable.

C. Phillips. "I wish to have your lordship's opinion, because I apprehend that "it never could have been the intention of the legislature to put prisoners in a "worse situation than they were in, before the passing of the late Act. Previous "to the passing of that Act it was the invariable practice of the Judges on cri-"minal trials, to look at the depositions, in order to detect differences between "the evidence of the witnesses before the Magistrates, and before the Court, and "when they found a material variation to hand the depositions to the witness, "to shew him his signature, and to question him upon them. The Judge in "such cases always apprized the jury of the different swearing, and the prisoner "was not thereby put to any additional peril. But now, if a prisoner's counsel "seeks to give the prisoner the advantage, which up to this year he possessed, "he is subject to a reply. A case occurred at the last Monmouth assizes, before "Mr. Baron Parke, in which I was counsel for the prisoner, and on a witness "for the prosecution, giving materially different evidence on the trial to that "which he had given before the Magistrate, I requested that learned Judge to

are and shall be admitted to make their full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney.

Counsel or Attorney.

"look at the depositions, and to question the witness as to the variance The "learned Judge refused to do so, saying, that he could take no notice of deposi-"tions now, but that if I chose to bring them before the Court I must put them "in as my evidence, and then the counsel for the prosecution would be entitled "to the reply, I put the depositions in evidence, and there was a powerful "reply, but the jury acquitted the prisoner on account of the difference between "the deposition and the evidence of the witness as given at the trial, I wish to "know from your Lordships whether these are to be considered as peremptory "rules laid down by the Judges, to be rigidly acted on, or whether they are "open to argument."

Littledale J., after conferring with Coleridge, J., said: "My brother Cole-"ridge has suggested what has all along occurred to me, that I should look at "the depositions as the witness is giving his evidence, and question him as to "any discrepancy between them and his evidence as given here."

C Phillips—I feel grateful to your Lordship for the suggestion, on that understanding I will proceed with the cross examination, being fully satisfied with that course.

Adolphus, for the prosecution said, that whenever, under the old system the prisoner's counsel cross examined upon the depositions, the counsel for the prosecution was always entitled to reply, and he mentioned instances of Judges having so ruled.

Clarkson, for the prisoner, in addition to what his learned friend, Mr. Phillips had said, requested the Court to decide whether the rules of the Judges were to be rigidly acted upon, or to be open to argument. He contended that the Judges had no right or authority to make those rules and that they could have no power to promulgate any rules whatever under the prisoner's counsel act; the only mode in which they could regulate the practice, was by decisions on particular cases, which came before them for determination.

Coleridge, J.,—Could any lawyer doubt the right to reply under the old system, where depositions were cross-examined upon, or where witnesses to character were called? It is true it was never exercised, because the prisoner's counsel could not address the jury, and the usage at the bar was not to insist upon it, but no one ever doubted the right.

Clarkson—It was not the practise, under the old system, to produce the depositions: counsel used to ask the witness, in cross-examination, if he had not said so and so before the Magistrate: he did not put in the depositions, and he need not now, any more than he is obliged to, put in a letter or other writing unless the rule of the Judges is compulsory.

Adolphus—The practice, as stated by Mr. Clarkson, was irregular, and was always so held when objected to.

Clarkson—I wish to know the opinion of the Court upon the point as to the rules, and I will mention that Lord Chief Justice Tindal, at the late Essex assizes, intimated to me that he was willing to hear any argument upon the subject.

C. Phillips then proceeded with the cross-examination of the witness, who stated that he was desired by the mate of the vessel (one of the prisoners), to

Persons held to bail or committed for trial entitled to co ies of depositions.

III. AND IT IS HEREBY ENACTED, that all persons, who, after the passing of this Act, shall be held to bail, or committed to prison, for any offence against the law for which they are to be tried before any of her Majesty's

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cook the dinner, and he replied that he could not cook the dinner while the blood was dropping down from the boy (the deceased.)

C. Phillips, (to witness), when you were examined before the Magistrates did you say any thing about this ?

Adolphus objects.

Coleridge J.—I think you should interpose another question.

Adolphus (to witness.)—Was what you said taken down in writing ? Witness. Yes, it was.

Littledale J.—We think upon this that you cannot insist upon an answer without putting in the depositions.

Coleridge J.—I think the right of the Judge remains the same, since the passing of the act as it was before, but I do not think that in all cases he is to refer to the depositions at the request or suggestion of the prisoner's counsel. He is to exercise his discretion Some times the Judge may be satisfied, notwithstanding some discrepancies, that the witness upon the whole is speaking the truth, and in such case he would not refer to the depositions at all But it may become a question whether in such a case if the Judge should refer to the depositions, and so introduce new facts in evidence, the counsel for the prosecution would not be entitled to reply. I am not prepared to say that he would not, all I wish to say now is, that I consider the Judge is to exercise his discretion as to whether he will refer to the depositions or not. Perhaps, in the case alluded to by Mr Phillips, Mr. Baron Parke did not think it necessary to refer to the depositions.

C. Phillips—He made me put them in, and there was a reply.

Coleridge J.—Perhaps the discrepancies were not material.

C. Phillips—They were so material that the prisoner was acquitted in consequence of them.

The question was then withdrawn.

Clarkson, in the progress of the case, ascertained from one of the witnesses that he was cross-examined, when before the Magistrate at Falmouth by a solicitor on behalf of the prisoner; and it appearing to the learned Judge, who was trying the case that no cross examination had been returned in the depositions, Clarkson was allowed to ask the witness whether he had not in answer to the solicitor's questions said such and such things. No objection was made to this, either at the bar or on the bench.

In a subsequent stage of the case, it was proposed, on the part of the prisoner, to put the depositions into the hands of a witness, and desire him to look at his own, and refresh his memory by it, and then to ask him whether, after having so done, he would adhere to the statement which he had just made.

The Judges thought there was no objection to this mode of proceeding.

The witness, on being asked to read over his deposition said, that he could not read writing, and the Judge said there was no objection to his deposition

Courts of Justice, shall be entitled to require and have on demand from the person who shall have the lawful custody thereof, and who is hereby required to deliver the same copies of the examinations of the witnesses respectively

on payment of a reasonable sum for the same.

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being read over to him and the officer of the Court read it over to him accordingly.

Witnesses were called to the character of the prisoners.

Adolphus for the prosecution replied

The prisoners were found guilty of manslaughter only.

In the case of Rex *v.* Coveney reported in vol. 7, p. 667, for another point, *Clarkson* having stated that there had been of late some contrariety of practice as to putting depositions in evidence, Mr. Justice Patteson said : " Mr. *Clarkson*, I do not know that you must take it that there has been any contrariety of practice. The distinction is, that if the witness on cross examination denies that he omitted or said, what is referred to, then if you mean to shew that he did, you must give the depositions in evidence ; but if the witness on the cross examination admits the admission or the statement himself then it will not be necessary. That is the distinction, and I believe that has been the practice "

The reporters add as follows.

" However, it seems now to be settled that the resolutions of the Judges are " to regulate the practice. They have been acted upon to our knowledge (in " addition to Mr. Justice *Littledale* and Mr Justice *Coleridge*, in the above " case, and Mr. Baron *Parke* in the case cited), by Lord Chief Justice *Tindale* in Greenacre's case, by Mr. Justice *Parke* in Rex *v.* Coveney, by Mr. " Justice *Williams* in Rex v. Penruddock, and by Mr. Baron *Bolland*, Mr. " Justice *Bosanquet* and Mr. Justice *Coltman* in several cases at the Central " Criminal Court during the October session of the present year, 1837 ; and also " by Mr. Justice *Patteson*."

The jury should take the law from the Judge ; and therefore where cases had been cited to the Judge on a legal argument, and he had given an opinion on them, they were not allowed to be read to the jury in the address of the prisoners counsel to them.

The indictment was for forgery.

Walesby addressed the jury for the prisoner, and in the course of his address was proceeding to read the observations of Mr. Justice Coleridge in Rex v. Forbes

Lord Abinger, C. B , Mr Walesby, I cannot allow you to read cases to the jury. It is the duty of the jury to take the law from the Judge. It no doubt often happens, that in an address to the jury, counsel cite cases : but then it is considered that that part of the speech of counsel is addressed to the Judge. That cannot be so here as you very properly in the first instance referred me to the case, and you have my opinion upon it ; you can therefore make no further legitimate use of the case, and the only effect of reading it would be to discuss propositions of law with the jury, with which they have nothing to do, and which they ought to take from me.

Verdict not guilty.

Regina v. Parish, Oxford Circuit 1839, before Lord Abinger, C. B., 8 Carr. and P. 94.

upon whose depositions they have been so held to bail or committed to prison, on payment of a reasonable sum for the same, to be fixed by such Courts respectively: Provided always that if such demand shall not be made before

Proviso, if not demanded before Sessions,

On the examination of a prisoner before the magistrate on a charge of felony, the magistrate's clerk told the prisoner not to say anything to prejudice himself, as what he said would be taken down, "and used for him or against him at his trial"; *Held*, that this was an inducement held out, and that the statement was therefore not receivable in evidence.

Regina *v.* Drew. Ox Circ. 1837, 8 Carr. & P. 140.

If in a case of felony the prisoner's counsel has addressed the jury, the prisoner himself will not be allowed to address the jury also.

Regina *v.* Daniel Boucher, Ox. Circ. 1837, before Mr. Justice Coleridge, 8 Carr. & P. 141.

A prisoner's counsel in addressing the jury, will not be allowed to state any thing which he is not in a situation to prove by evidence, or which is not already in proof; and the counsel for the prisoner will not be allowed to state the prisoner's story.

Regina *v.* Henry Beard, Ox. Circ. 1837, before Mr. Justice Coleridge, 8 Carr. & P. 142.

On the trial of a case of shooting, with intent to do grievous bodily harm, there having been no person present at the time of the offence but the prosecutor and the prisoner, the latter was under these special circumstances, allowed to make a statement before his counsel addressed the jury.

Regina *v.* Malings, Ox. Circ. 1838, before Mr. J. Alderson, 8 Carr. & P. 242.

Although the Judge will under very peculiar circumstances, allow a prisoner charged with felony, to make a statement before his counsel addresses the jury, this is not to be considered as a precedent with respect to the general practice in such cases.

Regina *v.* Walkling, Ox. Circ. 1838, before Mr. Baron Gurney, 8 Carr. & P. 243.

In cases of felony it is the duty of the counsel for the prosecution to be assistant to the court in the furtherance of Justice and not to act as counsel for any particular person or party.

Regina *v.* Thursfield, 8 Carr & P. 254.

Murder. The prisoner was indicted for the wilful murder of her male bastard child by suffocating it

In opening the case, *Corbett* for the prosecution said, that he should state to the jury the whole of what appeared on the depositions to be the facts of the case, as well those which made in favour of the prisoner as those which made against her; as he apprehended his duty, as counsel for the prosecution, to be to examine the witnesses who would detail the facts to the jury, after having narrated the circumstances in such a way as to make the evidence, when given, intelligible to the jury, not considering himself as counsel for any particular side or party. He then opened the whole of the facts, from which it appeared most probable, that the child was overlaid by accident.

the day appointed for the commencement of the Sessions at which the trial of the person on whose behalf such demand shall be made, is to take place, such person shall not be entitled to have any copy of such examination of witnesses, unless the Judge, at such trial, shall be of opinion, that such copy may be made and delivered without delay or inconvenience to such trial; but it shall nevertheless be competent to such Judge, if he shall think fit, to postpone such trial on account of such copy of the examination of witnesses not having been previously had by the party charged. (1)

leave of Judge accessary.

Who may postpone trial.

Evidence was adduced to the same effect as was opened. Gurney B., the learned counsel for the prosecution has most accurately conceived his duty, which is to be assistant to the court in the furtherance of justice and not to act as counsel for any particular person or party.

Verdict not guilty. 8 Carr & P. 269

A prisoner charged with felony, who is defended by counsel, ought not to be allowed to make a statement in addition to defence of counsel, unless under very particular circumstances; and the general rule ought to be, that a prisoner defended by counsel should be entirely in the hands of his counsel; and that rule should not be infringed on except in very special cases.

The indictment was for the murder of a female child.

J. J. Williams, for the prisoner asked, that the prisoner should be allowed to make a statement to the jury before he addressed them.

Patteson. J. The general rule certainly ought to be, that a prisoner defended by counsel should be entirely in the hands of his counsel, and that rule should not be infringed on except in very special cases indeed. If the prisoner were allowed to make a statement, and stated as a fact any thing which could not be proved by evidence, the jury should dismiss that statement from their minds but if what the prisoner states is merely a comment on what is already in evidence, his counsel can do that much better than he can.

The prisoner did not make any statement and Williams addressed the jury.

Verdict not guilty of murder but guilty of concealment.

Regina v. Mary Rider, Ox. Circ. 1838, 8 Carr, & P 539.

(1) When a prisoner is willing to make a statement, it is the duty of magistrates to receive it; but magistrates, before they do so, ought entirely to get rid of any impression that may have before been on the prisoner's mind, that the statement may be used for his own benefit; And the prisoner ought also to be told that what he thinks fit to say, will be taken down, and may be used against him on his trial. Nothing should be returned as a deposition, usless the prisoner had an opportunity of knowing what was said, and an opportunity of cross-examining the person making the deposition.

Lord Denman, C. J. in summing up. "The frequent warnings given to prisoners, not to say any thing that may criminate themselves, renders it necessary for me to set right a prevalent error on this subject, and to state what I conceive to be the proper course of proceeding. A prisoner is not to be entrapped

All persons charged may inspect depositions on trial.

IV. AND IT IS HEREBY ENACTED, that all persons under trial in any of her Majesty's Courts of Justice, shall be entitled at the time of their trial, to inspect, without fee or reward, all depositions or copies thereof, which have been taken against them, and returned into the Court before which such trial shall be had.

"into making any statement, but, when a prisoner is willing to make a state-"ment, it is the duty of magistrates to receive it; but magistrates before they do "so, ought entirely to get rid of any impression that may have before been on "the prisoner's mind, that the statement may be used for his own benefit; and "the prisoner ought also to be told that what he thinks fit to say will be taken "down and may be used against him on his trial"

Regina v. Arnold, Home Circ 1838 8 Carr. 621.

A magistrate returned at the end of the depositions against a prisoner in a case of felony. "The prisoner being advised by his Attorney declines to say any thing." It appeared at the trial that the depositions had been taken, and signed by the witnesses on the 14th of November, but that on the 10th of November minutes had been taken of the evidence, and the prisoner had made a statement which was taken down in writing by the magistrate's clerk. *Held*, that this statement might be proved on the part of the prosecution, by the clerk who took it down; as, whatever a prisoner has said is evidence, though the magistrate may have neglected his duty in not returning it with the depositions

Regina v. Wilkinson C. Crim. C. 1838, before Littledale J. and Parke, Baron 8. Carr & P 662.

A prisoner is not entitled under the stat 6 and 7 W. 4, c. 114, § 3, to a copy of *his own statement* returned by the magistrate, as made before him, but only to a copy of the depositions of the witnesses against him.

Regina v Aylett and Johnson, C. Crim C 1838, 8 Carr. & P. 669.

A Coroner's Jury on the investigation of homicide returned a verdict "of wilful murder against some person or persons, unknown" The Coroner returned the depositions he had taken to the Central Criminal Court:—*Held*, on application by the Counsel for a prisoner, indicted for the murder of the same person, for a copy of such depositions that although the Coroner could not in such a case, have been compelled to return them under statute 7 Geo. 4, c. 64, § 4, yet that having done so, the Judges had power, by their general authority as a Court of Justice, to order a copy to be given, if they thought it material to the interests of Justice

Exparte James Greenacre, before Mr. J. Littledale and Mr. J. Coleridge C. Crim. C. 1837, 8 Carr. & P. 32.

ACT No. XXVII. OF 1839.

Passed, by the Hon'ble the President of the Council of India in Council, on the 16th December, 1839.

AN Act for authorizing the *Court of Requests for the Town of Calcutta* to execute decrees passed by the Judge of the Dewanny Adawlut of the zillah of the 24-Pergunnahs in certain cases.

I. WHEREAS execution of the decrees of the Courts of Justice of the zillah of the 24-Pergunnahs is often defeated, by the parties against whom the same have been obtained absconding from the limits of the said zillah into the town of Calcutta; AND WHEREAS, by Regulation XVI of 1812 of the Bengal Code, provision is made, where the like inconvenience occurs by parties absconding from the town of Calcutta into the said zillah, for the Judge of the said zillah enforcing the judgments of the Court of Requests of the town of Calcutta:

Reg xvi. of 1812.

IT IS HEREBY ENACTED, that if the defendant, in any suit decided by any Court of Justice of the zillah of the 24-Pergunnahs, the plaintiff in which shall have obtained a decree, shall retire before execution of the same into the jurisdiction of the Court of Requests, that Court, upon receiving a written application from the Judge of Dewanny Adawlut of the zillah of the 24-Pergunnahs, setting forth the above circumstances, and accompanied by a copy of the decree duly authenticated, is hereby authorized and directed to proceed to execute the said decree in the mode prescribed for the execution of judgments obtained in the Court of Requests, and on payment of the like costs as are demanded for the execution of such judgments in ordinary cases. Provided always, that nothing in this Act contained shall be held to authorize the said Court of Requests to execute any decree except the cause of action in respect of which such decree was obtained

How the Court of Requests is to execute Decrees of the Court of Dewanny Adawlut of 24-Pergunnahs.

were such, that if it had occurred within the local jurisdiction of the said Court it would have been cognizable by the same.

ACT No. XXIX. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council on the 16th December, 1839.

AN Act for the Amendment of the Law relating to *Dower.**

I. WHEREAS it is expedient to extend the Amendments in the *English Law of Dower*, contained in the

* The reasons upon which the alteration in the law of dower is founded, will appear by the following extract from the first report of the Commissioners of Real Property;

"The present law of dower gives to a surviving wife a right to have assigned to her for her life, one third of all the lands and hereditaments, (with a few exceptions, such as common *sans nombre* and personal annuities) of which her husband was seised in law, (that is, had the legal property by descent, there being at the same time possession) or in fact, for an estate of inheritance in possession at any time during the marriage, notwithstanding any alienation or disposition which the husband may have made of the estates, or any part of them.

"It does not give dower out of lands to which the husband had a right, but of which he had not seisin in law or in fact.

"The widow is not entitled to take possession of any land for her dower,—the assignment is to be made by the heir; and if he neglect it, or do it unfairly, she can compel a just assignment by legal process, and generally recover compensation for the detention

"This state of things has for a long period been so much changed, as to make the original law of dower highly inconvenient. Estates are now frequently conveyed away and changed by the husband, and it is desirable that there should be a power of so doing free from the burden of dower. The great increase, too, of personal property, affords other means of providing for widows

"In order to defeat the right of dower, purchasers have long had recourse to the contrivance of taking conveyances of estates in a very artificial form, called a conveyance to uses to bar dower, which, while it confers the whole beneficial ownership, and an absolute dominion over the legal estate, prevents the legal estate from so vesting in the purchaser as to make the property subject to his wife's dower. This ingenious form of conveyance, which was long in being perfected, and is now nearly universal, is found in practice to be attended with some inconveniences, and owing to the mistakes of unskilful practitioners, it occasionally leads to serious mischiefs.

Statute 3d and 4th William IV Chapter CV, to the territories of the East India Company in cases which, but for the passing of this Act, would be governed by the English Law of Dower as it existed previously to the passing of the aforesaid Statute :

Stat 3 & 4 W 4 c cv

IT IS HEREBY ENACTED, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in

Meaning of the words in the Act.

"The true principle (as we think) on which the law of dower was originally established, and on which it has a claim on grounds of justice and policy (without sacrificing the general convenience) to be supported, is, that it should be considered as that interest in an estate of inheritance which the law takes from the heir of a deceased proprietor, for the support of his widow, whose claims, in natural justice and policy, appear to stand at least on an equal footing with the claims of the heir, it is so far analogous to the provision which a law, established in more modern times, has made for the widow out of the husband's personal estate undisposed of by his will By combining this principle with another of high and perhaps paramount importance, a principle which the law has carefully established almost to its fullest extent, viz., that a right of alienation should be inseparably incident to property of every description, we think that the law of dower may be put on a footing more beneficial on the whole to widows, and free from nearly all the present inconveniences and mischiefs

"The distinction as to dower between the husband's seisin and his mere right, we think, in the present state of things, irrational

"We propose that dower should attach upon all estates of inheritance in possession, excepting the species of property to which dower is not incident; and on property considered in equity as real estate, of or to which any husband dies seised or entitled in fact or in law, whether legally and beneficially, or beneficially only, which, if belonging to the wife, would be subject to the husband's curtesy, but subject, like the interest of other persons having partial interests in the inheritance, to any estates, charges, or incumbrances which the husband may have lawfully created, or bound himself to create, and to his debts, so far as they attach on his freehold estates, and as to estates which he can affect by his will, to any disposition, direction or declaration made by his will, executed so as to affect freehold estate, and that dower should not attach on any other estate

"By this enactment, the artificial distinction between legal and equitable estates will be taken away, on the other hand, the subtle contrivances to which we have referred will become unnecessary

We propose that a provision, made by will for a widow out of personal estate, shall not deprive her of dower, unless the will, expressly or by clear implication, shall so direct, but that any devise of freehold estate shall be held to be free from dower, unless the contrary be declared

"And that as to estates which the husband might by his will dispose of against his wife's right to dower, he may by his will, duly executed, declare that such right should be discharged without making any further disposition And we propose that the enactments shall not interfere with the rule of courts of equity, giving widows a preference over other legatees, for legacies given to them in satisfaction of dower And we propose that a declaration in any deed or instrument, giving or devising estates of inheritance, may make the estate of the donee or devisee not subject to his wife's dower, but these enactments not to prevent courts from enforcing, on equitable principles, covenants or agreements of husbands not to bar the right to dower nor to prevent the barring of dower by agreement or settlement, or its forfeiture by adultery

this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows ; that is to say, the word "land" shall extend to messuages, and all other hereditaments, whether corporeal or incorporeal (except such as are not liable to dower), and to any share thereof, and every word importing the *singular number* only, shall extend and be applied to *several* persons or things as well as one person or thing.

Widows to be entitled to dower out of equitable estates

II. AND IT IS HEREBY FURTHER ENACTED, that when a husband shall die, beneficially entitled to any land for an interest which shall not entitle his widow to dower out of the same at law, and such interest, whether wholly equitable, or partly legal and partly equitable, shall be an estate of inheritance in possession, or equal to an estate of inheritance in possession, (other than an estate in joint-tenancy,) then his widow shall be entitled in equity to dower out of the same land.

Seisin shall not be necessary to give title to dower

III. AND IT IS HEREBY FURTHER ENACTED, that when a husband shall have been entitled to a right of entry or action in any land, and his widow would be entitled to dower out of the same if he had recovered possession thereof, she shall be entitled to dower out of the same, although her husband shall not have recovered possession thereof; provided that such dower be sued for or obtained within the period during which such right of entry or action might be enforced.

No dower out of Estates disposed of.

IV. AND IT IS HEREBY FURTHER ENACTED, that no widow shall be entitled to dower out of any land which shall have been absolutely disposed of by her husband in his life time, or by his will.

Priority to partial estates, charges and specialty debts.

V. AND IT IS HEREBY FURTHER ENACTED, that all partial estates and interests, and all charges created by any disposition or will of a husband, and all debts, incumbrances, contracts, and engagements to which his land shall be subject or liable, shall be valid and effectual as against the right of his widow to dower.

VI. AND IT IS HEREBY FURTHER ENACTED, that a widow shall not be entitled to dower out of any land of her husband, when in the deed by which such land was conveyed to him, or by any deed executed by him, it shall be declared that his widow shall not be entitled to dower out of such land

Dower may be barred by a declaration in a deed;

VII. AND IT IS HEREBY FURTHER ENACTED, that a widow shall not be entitled to dower out of any land of which her husband shall die wholly or partially intestate, when by the will of her husband, duly executed for the devise of freehold estates, he shall declare his intention that she shall not be entitled to dower out of such land or out of any of his lands.

or by a declaration in the husband's will.

VIII. AND IT IS HEREBY FURTHER ENACTED, that the right of a widow to dower shall be subject to any conditions, restrictions or directions which shall be declared by the will of her husband, duly executed as aforesaid.

Dower shall be subject to restrictions

IX. AND IT IS HEREBY FURTHER ENACTED, that where a husband shall devise any land out of which his widow would be entitled to dower if the same were not so devised, or any estate or interest therein, to or for the benefit of his widow, such widow shall not be entitled to dower out of or in any land of her said husband, unless a contrary intention shall be declared by his will.

Devise of real estates to the widow shall bar her dower.

X. AND IT IS HEREBY FURTHER ENACTED, that no gift or bequest made by any husband, to or for the benefit of his widow, of or out of his personal estate, or of or out of any of his land not liable to dower, shall defeat or prejudice her right to dower, unless a contrary intention shall be declared by his will.

Bequest of personal estate to the widow shall not bar her dower.

XI. PROVIDED always and it is hereby further enacted, that nothing in this act contained shall prevent any Court of Equity from enforcing any covenant or agreement entered into by or on the part of any husband not to bar the right of his widow to dower out of his lands or any of them.

Agreement not to bar dower may be enforced.

Legacies in bar of dower still entitled to preference.

XII. AND IT IS HEREBY FURTHER ENACTED, that nothing in this act contained, shall interfere with any rule of equity, or of any Ecclesiastical Court by which legacies bequeathed to widows in satisfaction of dower are entitled to priority over other legacies.

Certain dowers abolished.

XIII. AND IT IS HEREBY FURTHER ENACTED, that no widow shall hereafter be entitled to dower *ad ostium ecclesiæ*, or dower *ex assensu patris*.

Act not to take effect before the 1st July 1840.

XIV. AND IT IS HEREBY FURTHER ENACTED, that this act shall not extend to the dower of any widow who shall have been or shall be married on or before the first day of July one thousand eight hundred and forty, and shall not give to any will, deed, contract, engagement, or charge executed, entered into or created before the said first day of July one thousand eight hundred and forty, the effect of defeating or prejudicing any right to dower

Construction of the act defined

XV. AND IT IS HEREBY PROVIDED, that this act shall not be construed to affect any right of property in land, otherwise than by modifying the law of dower in cases governed by the English law of dower, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT No. XXX. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 16th December, 1839.

AN Act for the amendment of the Law of *Inheritance.* *

I. WHEREAS it is expedient to extend the amendments,

* The report of the commissioners of real property will explain the general object of the alterations made by this act, and for further information on the important subject of the law of descents, the reader is referred to 2 Bl. Comm. 200—240; Watkins H. Chitty on Descents; Bac. Abr Com. Dig Descents; Hale's Hist. C. L. 206—248.

" The rules which govern the transmission of freehold estates of inheritance at common law, on the decease of an absolute proprietor, in the absence of express disposition by him,

in the English law of *Inheritance*, contained in the Statute 3d and 4th William IV. Chapter CVI., to the territories of the East India Company in cases which, but for the passing of this act, whould be governed by

Stat. 3 & 4 W. 4 c. cvi.

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are (for the most part) well understood, and appear to be well suited to the habits and feelings of the people.

"Collateral relations, in order to be let in to inherit, must be of the whole blood of the person from or through whom they are to derive their claim.

"Thus a brother of the deceased proprietor, by the same father but a different mother, cannot inherit to the deceased proprietor, whether he took by purchase or descent. The estate will rather escheat, and the same is the case with an uncle, half brother of the father, and so on: this rule, like that which excludes the lineal ancestor, has long been felt to rest on no sound principle, and to be hard in its operation.

"We think that both these rules may be taken away, without introducing any uncertainty into the law of inheritance, or materially impairing its symmetry.

As to the Half Blood.

"We think it advisable that no distinction should exist between the whole and the half blood, except that preferance should be given to the whole blood of the first purchaser, as between his kindred in equal degree of their descendants, with the exception of a single case afterwards mentioned.

"The following reasons seem to us sufficient for putting the whole blood and the half blood on an equal footing, with the above exception.

"1st. One ancestor only of any couple of ancestors being the person from or through whom the inheritance descends, it seems needless to have any regard to the other ancestor. Thus if land descends from the father to the eldest son, there seems no reason why it should not pass from him to the second son, whether born of the same or another mother.

"2d The rule is recommended by the principle of conformity already suggested, as in the transmission of personal estate, the whole blood and half blood stand on an equal footing, and so in case of descent of a title of nobility, or of an estate tail.

"3d. The difference between the whole and the half blood, however well understood by lawyers, is, it is believed, not familiar to the public; lands are, therefore, liable to be left to descend contrary to the intention of the owner, and they are liable to be claimed and to be possessed contrary to the law without an evil intention; and further, in deducing the title on sales of estates, the circumstance of half blood, being not of very frequent occurrence, is liable to be overlooked by those who prepare the abstract of title, and by those who know nothing of the pedigree but what is laid before them, and thus a bad title may be approved of by the advisers of a purchaser for valuable consideration and accepted by him; whatever leads to insecurity of titles is, of course, independently of other considerations, greatly objectionable.

"Some of the above reasons apply with equal force to the case in which a person who died seisin was himself the purchaser.

"The reason which has inclined us to give a limited preference to the whole blood in this case is, that when one parent has issue by another marriage, the connection between the members of the two families is felt to be much less than between the members of each family. If a brother leave a whole brother or sister, or the issue of either of these, and also an elder brother by a different marriage, it would be repugnant to common feelings and notions, to direct his estate to descend to the half brother, although if he left a brother or sister of the half blood, or the issue of such, and only a more remote relation of the whole blood, the proximity of kindred would seem to give a reasonable preference to the former. It would be desirable if, with reference to the half blood, a distinction could be drawn

the English law of Inheritance as it existed previously to the passing of the aforesaid Statute:

Meaning of the words in the Act.

IT IS HEREBY ENACTED, that the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows; (that is to say,) the word "Land" shall extend to messuages and all other hereditaments, whether corporeal or incorporeal, and whether freehold or of any other tenure, and to money to be laid out in the purchase of land, and to chattels and other personal property transmissible to heirs, and also to any share of the same hereditaments and properties or any of them, and to any estate of inheritance or estate for any life or lives, or other estate transmissible to heirs, and to any possibility, right, or title of entry or action, and any other interest capable of being inherited, and whether the same estates, possibilities, rights, titles, and interests, or any of them, shall be in possession, reversion, remainder, or contingency; and the words "the purchaser" shall mean the person who last acquired the land otherwise than by descent, or than by any escheat, partition, or enclosure, by the effect of which the land shall have become part of or descendible in the same manner as other land acquired by descent; and the word "descent" shall mean the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or

"The Purchaser."

"Descent."

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between the case of a purchaser by his own act, according to the familiar use of the word purchaser, and that of a purchaser in the mere technical sense of the word, that is, a person who may have succeeded perhaps to the family estate, but is considered as a purchaser, because it comes to him through some deed or will, and not by inheritance, and in the latter case to put the whole and the half blood on an equal footing: it is considered, however, impracticable to frame a law founded on this distinction, which should be clear and simple, except, indeed, that a power may be given to the person from whom the property comes, of directing that it shall be taken as if it descended from a particular line of ancestors as hereafter explained, in which case we think the distinction of the whole and half blood may also be taken away.

"It is proposed, therefore, that the whole blood of the first purchaser, who took without reference to any ancestor, shall be preferred, as between persons claiming through the same ancestor of the first purchaser to the half blood, and that subject to this preference, the distinction between the whole and the half blood shall be abolished.

other issue; and the expression "descendants" of any ancestor shall extend to all persons who must trace their descent through such ancestor; and the expression "the person last entitled to land" shall extend to the last person who had a right thereto, whether he did or did not obtain the possession or the receipt of the rents and profits thereof; and the word "assurance" shall mean any deed or instrument other than a will by which any land shall be conveyed or transferred at law or in equity; and every word importing the *singular* number only, shall extend and be applied to *several* persons or things as well as one person or thing, and every word importing the masculine gender only, shall extend and be applied to a female as well as a male.

"Descendant."

"Person last entitled."

"Assurance."

Number and gender.

II. AND IT IS HEREBY FURTHER ENACTED, that in every case descent shall be traced from the purchaser, and, to the intent that the pedigree may never be carried further back than the circumstances of the case and the nature of the title shall require, the person last entitled to the land shall, for the purposes of this act, be considered to have been the purchaser thereof, unless it shall be proved that he inherited the same, in which case the person from whom he inherited the same shall be considered to have been the purchaser, unless it shall be proved that he inherited the same, and in like manner the last person from whom the land shall be proved to have been inherited shall in every case be considered to have been the purchaser, unless it shall be proved that he inherited the same.

Descent shall always be traced from the purchaser, but the last owner shall be considered to be the purchaser, unless the contrary be proved.

III. AND IT IS HEREBY FURTHER ENACTED, that when any land shall have been devised by any testator who shall die after the first day of July one thousand eight hundred and forty, to the heir or to the person who shall be the heir of such testator, such heir shall be considered to have acquired the land as a devisee and not by descent; and when any land shall have been limited by any assurance executed after the said first day of July one thousand eight hundred and forty, to the person or the heirs of the person who shall thereby have conveyed the same land,

Heir entitled under a will, shall take as devisee, and a limitation to the grantor or his heirs shall create an estate by purchase.

such person shall be considered to have acquired the same as a purchaser by virtue of such assurance, and shall not be considered to be entitled thereto as his former estate or part thereof.

Where heirs take by purchase under limitations to the heirs of their ancestors, the land shall descend as if the ancestor had been the purchaser.

IV. AND IT IS HEREBY FURTHER ENACTED, that when any person shall have acquired any land by purchase under a limitation to the heir or the heirs of the body of any of his ancestors, contained in an assurance executed after the said first day of July one thousand eight hundred and forty, or under a limitation to the heir or to the heirs of the body of any of his ancestors, or under any limitation having the same effect, contained in a will of any testator who shall depart this life after the said first day of July one thousand eight hundred and forty, then and in any of such cases such land shall descend, and the descent thereof shall be traced as if the ancestor named in such limitation had been the purchaser of such land.

Brother, &c. trace descent through their parent.

V. AND IT IS HEREBY FURTHER ENACTED, that no brother or sister shall be considered to inherit immediately from his or her brother or sister, but every descent from a brother or sister shall be traced through the parent.

Lineal ancestor may be heir in preference to collateral persons claiming through him.

VI. AND IT IS HEREBY FURTHER ENACTED, that every lineal ancestor shall be capable of being heir to any of his issue, and in every case where there shall be no issue of the purchaser, his nearest lineal ancestor shall be his heir in preference to any person who would have been entitled to inherit, either by tracing his descent through such lineal ancestor, or in consequence of there being no descendant of such lineal ancestor, so that the father shall be preferred to a brother or sister, and a more remote lineal ancestor to any of his issue, other than a nearer lineal ancestor or his issue.

The male line to be preferred.

VII. AND IT IS HEREBY FURTHER ENACTED AND DECLARED, that none of the maternal ancestors of the person from whom the descent is to be traced, nor any of their descendants, shall be capable of inheriting until all his paternal ancestors and their descendants shall have

failed; and also that no female paternal ancestor of such person, nor any of her descendants, shall be capable of inheriting until all his male paternal ancestors and their descendants shall have failed; and that no female maternal ancestor of such person, or any of her descendants, shall be capable of inheriting until all his male maternal ancestors and their descendants shall have failed.

The mother of more remote male ancestor to be preferred to the mother of the less remote male ancestor.

VIII. AND IT IS HEREBY FURTHER ENACTED AND DECLARED, that where there shall be a failure of male paternal ancestors of the person from whom the descent is to be traced and their descendants, the mother of his more remote male paternal ancestors, or her descendants, shall be the heir or heirs of such person, in preference to the mother of a less remote male paternal ancestor, or her descendants; and where there shall be a failure of male maternal ancestors of such person, and their descendants, the mother of his more remote male maternal ancestor, and her descendants, shall be the heir or heirs of such person in preference to the mother of a less remote male maternal ancestor, and her descendants.

Half blood, if on the part of a male ancestor, to inherit after the whole blood of the same degree, if on the part of a female ancestor after her.

IX. AND IT IS HEREBY FURTHER ENACTED, that any person related to the person from whom the descent is to be traced by the half blood, shall be capable of being his heir, and the place in which any such relation by the half blood shall stand in the order of inheritance, so as to be intitled to inherit, shall be next after any relation in the same degree of the whole blood, and his issue, where the common ancestor shall be a male, and next after the common ancestor where such common ancestor shall be a female, so that the brother of the half blood on the part of the father shall inherit next after the sisters of the whole blood on the part of the father and their issue, and the brother of the half blood on the part of the mother shall inherit next after the mother.

After the death of a person attainted, his descendants may inherit.

X. AND IT IS HEREBY FURTHER ENACTED, that when the person from whom the descent of any land is to be traced shall have had any relation, who, having been attainted, shall have died before such descent shall have taken place, then such attainder shall not prevent any person

from inheriting such land who would have been capable of inheriting the same by tracing his descent through such relation if he had not been attainted, unless such land shall have escheated in consequence of such attainder before the first day of July one thousand eight hundred and forty.

Act not to extend to any descent before 1st July 1840.

XI. AND IT IS HEREBY FURTHER ENACTED, that this act shall not extend to any descent which shall take place on the death of any person who shall die before the said first day of July one thousand eight hundred and forty.

Limitations made before the 1st July 1840. to the heirs of a person then living, shall take effect as if the Act had not been made.

XII. AND IT IS HEREBY FURTHER ENACTED, that where any assurance executed before the said first day of July, one thousand eight hundred and forty, or the will of any person who shall die before that time, shall contain any limitation or gift to the heir or heirs of any person, under which the person or persons answering the description of heir shall be entitled to an estate by purchase, then the person or persons who would have answered such description of heir, if this act had not been made, shall become entitled by virtue of such limitation or gift, whether the person named as ancestor shall or shall not be living at the time aforesaid.

Construction of the act defined

XIII. AND IT IS HEREBY PROVIDED, that this act shall not be construed to affect inheritances of land, which are not subject to the English law of Inheritance, or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

ACT No. XXXI. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 23d December, 1839.

AN Act for remedying certain defects in the Statute 9th George IV, Ch. 74, relating to the *Coin.*

Stat. 9 G. 4, c. 74

I. WHEREAS it is expedient to remedy certain defects in the Statute 9th George IV., Ch. 74, of which the

inconvenience is particularly experienced relating to injuries to the *coin*.

Clipping or debasing current coin, felony.

IT IS HEREBY ENACTED, that if any person shall fraudulently clip, file, drill, deface, or debase any current, gold or silver coin, issued from any Mint of the East India Company, or usually received as money in any part of the territories under the Government of the East India Company, with intent to make the coin so clipped, filed, drilled, defaced, or debased, pass for the current gold or silver coin so issued, or usually received as money as aforesaid, every such offender shall be guilty of felony, and shall be liable, on conviction, at the discretion of the Court, to be transported to such place as the Court shall direct, for life or any term of years, or to be imprisoned for any term not exceeding four years.

Punishment.

Transportation of natives of East Indies.

II. AND IT IS HEREBY PROVIDED, that it shall not be lawful for any Court under the authority of this Act, to order the transportation of any person being a native of the East Indies, and not born of European parents, to the eastern coast of New South Wales, or any of the Islands adjacent thereto.

Limited to offences within criminal jurisdiction of Queen's Courts.

III. AND IT IS HEREBY ENACTED, that this Act shall extend to all persons and over all places over whom or which the criminal jurisdiction of any of Her Majesty's Courts of Justice within the territories under the Government of the East India Company extends, but not further, or otherwise.

ACT No. XXXII. OF 1839.

Passed by the Hon'ble the President of the Council of India in Council, on the 30th December, 1839.

AN Act concerning the allowance of *Interest* in certain cases.

I. "WHEREAS it is expedient to extend to the

"territories under the Government of the East India Com-
"pany, as well within the jurisdiction of Her Majesty's
"Courts as elsewhere, the provisions of the Statute 3d
"and 4th William IV. Chapter 42, Section 28, concern-
"ing the allowance of *interest* in certain cases:"

Stat. 3 and 4 W. 4, c. 42. § 28.

IT IS THEREFORE HEREBY ENACTED, that upon all debts or sums certain, payable at a certain time or otherwise, the Court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debts or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debtor that interest will be claimed from the date of such demand until the term of payment; Provided that interest shall be payable in all cases in which it is now payable by law.

Court may allow interest on sums payable at a certain time or otherwise.

Proviso.

ACT No. V. OF 1840.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 24th February, 1840.

AN Act concerning the *Oaths and Declarations* of *Hindoos* and *Mahometans*.

I. "WHEREAS obstruction to justice, and other
"inconveniences, have arisen in consequence of persons
"of the Hindoo or Mahometan persuasion being com-
"pelled to swear by the water of the Ganges, or upon
"the Koran, or according to other forms, which are re-
"pugnant to their consciences or feelings:"

IT IS HEREBY ENACTED, that except as hereinafter provided, instead of any oath or declaration now authorized or required by law, every individual of the classes

Affirmation substituted for oath.

aforesaid, within the territories of the East India Company, shall make affirmation to the following effect:—

Form.

"I solemnly affirm, in the presence of Almighty God, that what I shall state, shall be the truth, the whole truth, and nothing but the truth." *

False affirmation or statement punishable as perjury before.

II. AND IT IS HEREBY ENACTED, that if any person making such affirmation as aforesaid, shall wilfully and falsely state any matter or thing which, if the same had been sworn before the passing of this Act, would have amounted to perjury, every such offender shall be subject in all Courts to the same punishment to which persons convicted of perjury were subject before the passing of this Act.

Subornation punishable as before.

III. AND IT IS HEREBY ENACTED, that any person causing or procuring another to commit the offence defined in the second section of this Act, shall be subject in all Courts to the same punishment to which persons convicted of subornation of perjury were subject before the passing of this Act.

Not to extend to Act xxi of 1837 or to Queen's Courts.

IV. AND IT IS HEREBY ENACTED, that this Act shall not extend to any declaration made under the authority of Act No. XXI. of 1837, nor to any Declaration or Affirmation made in any of Her Majesty's Courts of Justice.

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* See Stat. 9 G 4 c. 74, *ante* 214. The following form has been adopted by the Supreme Court to be used in all cases and by all denominations of persons where a solemn declaration is substituted for oaths —"I, A B. &c., do solemnly declare and affirm that I will speak the whole truth touching this matter."

By Regulation IV of 1793, the following declaration is to be subscribed by a Hindoo witness exempted from taking an oath. 'I will faithfully answer according to the truth, such questions as may be put to me by the Court in the cause now before the Court, I will not declare any thing not warranted by the truth, if I declare any thing not warranted by the truth I shall be deserving of punishment from Ishewur."—A B.

In Menu Chap 8, are these forms, Sec. 89. "Whatever places of torture have been prepared for the slayer of a priest, for the murderer of a woman or of a child, for the injurer of a friend, and an ungrateful man, those places are ordained for a witness who gives false evidence."

90.—"The fruit of every virtuous act, which thou hast done, O good man, since thy birth, shall depart from thee to dogs if thou deviate in speech from the truth."

101.—"Marking well all the murders, which are comprehended in the crime of perjury, declare thou the whole truth with precision, as it was heard, and as it was seen by thee."

ACT No. VI. OF 1840.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 2d March, 1840.

AN Act for the Amendment of the Law concerning the negotiation of *Bills of Exchange.*

I. "WHEREAS it is expedient to extend to the "Territories under the Government of the East India "Company, the amendments of the Law respecting Bills "of Exchange contained in the Statutes 58 Geo. 3. Cap. "93—1 and 2 Geo. 4. C. 78—6 and 7 W. 4. C. 58—2 "and 3 W. 4. C. 98."

What a general what a special acceptance.

IT IS HEREBY ENACTED, that from and after the first day of May, in the year of our Lord 1840, if any person shall accept a bill of Exchange payable at any other place than at his own place of residence, without further expression in his acceptance, such acceptance shall be deemed and taken to be to all intents and purposes a general acceptance. But if the acceptor shall, in his acceptance, express that he accepts the bill payable at such other place only, and not otherwise or elsewhere, such acceptance shall be deemed and taken to be to all intents and purposes, a qualified acceptance of such bill, and the acceptor shall not be liable to pay such bill except in default of payment when such payment shall have been duly demanded at such other place.

Acceptance must be in writing on bill.

II. AND IT IS HEREBY ENACTED, that after the day and year aforesaid, no acceptance of any bill of Exchange drawn within the territories of the East India Company, shall be sufficient to charge any person unless such acceptance be in writing on such bill, or, if there be more than one part of such bill, on one of the said parts.

III. AND IT IS HEREBY ENACTED, that it shall not be necessary to present bills of Exchange accepted, supra protest for honor, or having a reference thereon in case of need, to the acceptor or acceptors for honor, or to the referee or referees, until the day following the day on which such bills of exchange shall become due, and if the place of address on any such bill of exchange of such acceptor or acceptors for honor, or of such referee or referees, be other than where such bill shall therein be made payable, then it shall not be necessary to forward such bill of exchange for presentment for payment to such acceptor or acceptors for honor, or referee or referees, until the day following the day on which such bill of exchange shall become due.

When bill accepted for honor to be presented for payment.

IV. AND IT IS HEREBY ENACTED, that all bills of Exchange wherein the drawer or drawers thereof shall have expressed that such bills of exchange are to be payable in any place other than the place by him or them therein mentioned to be the place of residence of the drawee or drawees thereof, and which shall not on the presentment thereof be accepted, shall or may be, without further presentment to the drawee or drawees, protested for non-payment in the place in which such bills of exchange shall have been by the drawer or drawers expressed to be payable, unless the amount owing upon such bills of exchange shall have been paid to the holder or holders thereof, on the day on which such bill would have become payable had the same been duly accepted.

When bill payable at place not the residence of drawee, not accepted, may be then protested.

V. AND IT IS HEREBY ENACTED, that no bill of Exchange or Promissory Note that shall be drawn or made after the passing of this Act shall, though it may have been given for a usurious consideration, or upon a usurious contract, be void in the hands of an indorsee for valuable consideration, unless such indorsee had, at the time of discounting or paying such consideration for the same, actual notice that such bill of exchange or promissory note had been originally given for a usurious consideration, or upon a usurious contract.

Bill or note though usurious, not void in the hands of Indorsee for valuable consideration, without notice.

Not to affect bills or notes not governed by law of England.

VI. AND IT IS HEREBY PROVIDED, that this Act shall not be construed to extend to affect bills of exchange or promissory notes, in any case which, but for the passing of this Act, would not be governed by the law of England, or to extend or alter the jurisdiction of any of her Majesty's Courts of Justice.*

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* The following forms of affidavits to hold to bail on bills of exchange and promissory notes are given from the latest edition of Chitty's Forms.

FORMS OF AFFIDAVITS TO HOLD TO BAIL.

On Promissory Notes.

Payee against maker.]—in Co.'s Rs. ——— for principal money (*a*) due on a promissory note for (*b*) Co.'s Rs..... made by the said C. D. payable to this deponent, at a day now past, [*or* "on a promissory note dated the ——— day of ———, 18 ——, and made by the said C. D., whereby the said C D. promised to pay, ——— months after the date thereof, to this deponent, or order, the sum of Co.'s Rs. ——— for value received."]

The like, on a note payable on demand.]—in Co.'s Rs. ——— for principal money (*a*) due on a promissory note for (*b*) Co.'s Rs. ———, made by the said C. D. payable to this deponent on demand.

Second indorsee against maker.]—in Co.'s Rs. ——— for principal money (*a*) due to this deponent as indorsee of a promissory note, made by said C. D. for the payment of (*b*) Co.'s Rs. ———, to E. or order at a day now past, and by the said E. F. indorsed to G. H. and by the said G. H. indorsed to this deponent.

First indorsee against Payee.]—in Co.'s Rs. ——— for principal money (*a*) due to this deponent as indorsee of a promissory note, made by E. F. for the payment of (*b*) Co.'s Rs. ——— to the order of the said C. D., at a day now past, and by the said C. D. indorsed to this deponent, and which said note hath been refused payment by the said E. F.

Indorsee against indorser.]—in Co.'s Rs ——— for principal money (*a*) due to this deponent as indorsee of a promissory note, made by E. F. for the payment of (*b*) Co.'s Rs, ——— to the order of G. H. at a day now past, and by the said G. H. indorsed to the said C. D. who indorsed the same to the deponent, and which said note hath been refused payment by the said E. F.

On Bills of Exchange.

Drawer against acceptor.]—in Co.'s Rs. ——— for principal money (*a*) due on a bill of Exchange, drawn by this deponent upon and accepted by the said C. D. for the payment of (*b*) Co's Rs. ——— to this deponent at a day now past.

Payee against acceptor.]—in Co's Rs. ——— for principal money (*a*) due on a bill of Exchange drawn by one E. F. upon and accepted by the said C D. for the payment of (*b*) Co.'s Rs. ——— to this deponent, at a day now past.

(*a*) Or, if interest be payable expressly by the note or bill and you intend arresting for it also, say, "*in Rs. ——— for principal money and Co.'s Rs. ——— for interest due on a promissory note or bill of exchange,*" [stating that the note or bill was made payable with interest.]

(*b*) The affidavit must state the amount for which the bill or note is drawn as in these precedents. See 5 Ad. & El. 818.

ACT No. IX. OF 1840.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 20th April, 1840.

AN Act for amending the law administered in Her Majesty's Courts of Justice, with reference to *Arbitrations, Damages,* and *interested Witnesses.*

I. "WHEREAS it is expedient to extend to the territories of the East India Company certain provisions of "the Statute 3d and 4th William IV. Chap. 42, whereby "remedies have been applied for the uncertainty and "imperfections heretofore incident to *Arbitrations,* for

Stat 3 and 4 W. 4, c 42 as to arbitrations, in sufficient damages, and interested witnesses.

Indorsee against acceptor,]—in Co,'s Rs. ——— for principal money (*a*) due to this deponent as indorsee of a bill of exchange drawn by E, F upon and accepted by the said C D. for the payment of (*b*) Co,'s Rs. ——— to the order of the said E. F. at a day now past, by him indorsed to this deponent.

Bearer against acceptor]—in Co's Rs, ——— for principal money (*a*) due to this deponent as the bearer of a bill of exchange drawn by E. F. upon and accepted by the said C. D. for the payment of (*b*) Co.'s Rs. ——— to the said E. F. or bearer, at a day now past, and by him transferred and delivered to this deponent.

Payee against drawer on non acceptance,]—in Co.'s Rs ——— for principal money (*a*) due on a bill of exchange drawn by the said C. D. upon E. F. for the payment of (*b*) Co 's Rs ——— to this deponent, and which said bill had been refused acceptance by the said E. F.

Payee against drawer on non-payment.]—in Co,'s Rs, ——— for principal money (*a*) due on a bill of exchrnge, drawn by the said C. D. upon E. F. for the payment of (*b*) Co 's Rs ——— to this deponent at a day now past, and which said bill hath been refused payment by the said E. F.

Indorsee against drawer on non payment,]—in Co.'s Rs.——for principal money, (*a*) due to this deponent as indorsee of a bill of exchange, drawn by the said C. D. on E F. for the payment of Co.'s Rs. ——— to the order of the said C. D. at a day now past C. D and by him indorsed to [G. H. who indorsed the same] to this deponent, and which said bill hath been refused exceptance by the said E. F.

Indorsee against drawer on non payment,] in Co.'s Rs. ——— for principal money (*a*) due to this deponent as indorsee of a bill of exchange drawn by the said C D. on E F, for the payment of (*b*) Co.'s Rs, ——— to the order of the said C. D. at a day now past, and by the said C. D indorsed [to G. H. who indorsed the same] to this deponent, and which said bill hath been refussed payment by the said E. F.

Second indorsee against second indorser,]—The affidavit, as by a second indorsee against the drawer, as in the two preceding forms, will suffice, altering the names, &c.

On a foreign bill of exchange against drawer]—A. B. of ——— maketh oath and saith, that C. D is justly and truly ——— indebted unto this deponent in the sum of Co.'s Rs. —for principal money upon and by virtue of a bill of exchange drawn by the said C. D.

"the *insufficient damages* to which injured parties were "limited by the technical forms of certain actions, and "for the obstruction to justice frequently occasioned by "reason of the legal *incompetency of witnesses* to give "evidence in consequence of having some *interest* in "the event of the suit to which their testimony relates:"

Verdict or judgment in favor of party for whom interested witness objected to and admitted not to be evidence for him nor *e converso* § 26.

IT IS HEREBY ENACTED, that, in order to render the rejection of witnesses on the ground of interest less frequent, if any witness shall be objected to in any of her Majesty's Courts of Justice, as incompetent, on the ground that the verdict or judgment in the action on which it shall be proposed to examine him would be admissible in evidence for or against him, such witness shall nevertheless be examined, but in that case a verdict or judgment in that action, in favour of the party on whose behalf he shall have been examined, shall not be admissible in evidence for him or any one claiming under him, nor shall a verdict or judgment against the party on whose behalf he shall have been examined, be admissible in evidence against him or any one claiming under him.

In what actions interest may be given besides damages § 29.

II. AND IT IS HEREBY ENACTED, that the Court on the trial of any issue, or on any inquiry of damages, in any suit before any of Her Majesty's Courts of Justice may, if it shall think fit, give damages in the nature of interest over and above the value of the goods at the time of the conversion or seizure in all actions of trover or trespass *de bonis asportatis*, and over and above the money recoverable in all actions on policies of assurance made after the passing of this Act.

Reference under rule of Court, or judges order, or

III. AND IT IS HEREBY ENACTED, that the power and authority of any arbitrator or umpire appointed by or in pursuance of any rule of Court, or Judges' order, or

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in parts beyond the seas, that is to say, at [Paris in the Kingdom of France] upon Messrs. G & Co for the payment of [—— francs] to the order of said C D and by him indorsed to E F. and by the said E F. indorsed to this deponent, and which said bill has been refused payment by the said Messrs G. & Co. and the same has been duly protested for such non payment. And this deponent further saith, that the sum of [—— francs] in the said bill mentioned at the time of the drawing the said bill, were and still are of the value of Co. s Rs. —— of lawful money of Bengal,

order of reference, in any action now brought or which shall be hereafter brought, or by or in pursuance of any submission to reference containing an agreement that such submission shall be made a rule of any of Her Majesty's Courts, shall not be revokable by any party to such reference without the leave of the Court by which such rule or order shall be made, or which shall be mentioned in such submission, or by leave of a Judge, (1) and the arbitrator or umpire shall and may, and is hereby required to proceed with the reference notwithstanding any such revocation, and to make such award, although the person making such revocation shall not afterwards attend the reference, and that the Court, or any Judge thereof, may from time to time enlarge the term for any such arbitrator making his award.

agreement to be made a rule, not revokable without leave of Court or Judge.

Arbitrator may proceed *exparte*.

Court or Judge may enlarge time. § 39.

IV. AND IT IS FURTHER ENACTED, that when any reference shall have been made by any such rule ororder as aforesaid, or by any submission containing such agreement as aforesaid, it shall be lawful for the Court by which such rule or order shall be made, or which shall be mentioned in such agreement, or for any judge by rule or order to be made for that purpose, to command the attendance and examination of any person to be named, or the production of any documents to be mentioned in such rule or order, and the disobedience to any such rule or order shall be deemed a contempt of Court, if, in addition to the service of such rule or order, an appointment of the time and place of attendance in obedience

Witnesses to be summoned by rule or order.

Where disobedience a contempt.

(1) It has been decided on this statute, that the court or a judge cannot make a rule or order for revoking the arbitrator's authority without hearing both parties, and a Judges order of revocation, made *exparte*, was rescinded by the court (*n*). The statute applies to references of civil proceedings only (*o*). To bring a case within the act, the reference must be complete, therefore the act does not apply to arbitrators appointed in pursuance of a clause in a deed that all disputes shall be referred to the arbitration of two persons, who are directed to choose an umpire before they proceed, but which umpire has not been appointed (*p*).

If a party improperly revokes the arbitrator's authority he will have to pay the costs of the reference.

(*n*) Clarke *v.* Stocken, 2 Bingh. N. S. 651, 3 Scott 90, 5 Dowl 32,—2 Hodges, I. S. C.

(*o*) Rex *v.* Bardell, I. Nev. and P. 74,—5 Dowl 238, S. C.

(*p*) Bright *v.* Downell, 4 Dowl. 756,—I. T. and G. 576, S. C.

thereto, signed by one at least of the arbitrators, or by the umpire before whom the attendance is required, shall also be served either together with or after the service of such rule or order: Provided always, that every person whose attendance shall be so required, shall be entitled to the like conduct money and payment of expences, and for loss of time as for and upon attendance at any trial: Provided also, that the application made to such Court or Judge for such rule or order, shall set forth the place where such witness is residing at the time, or satisfy such Court or Judge that such person cannot be found: provided also, that no person shall be compelled to produce under any such rule or order any writing or other document that he would not be compelled to produce at a trial, or to attend at more than two consecutive days to be named in such order.*

Entitled to conduct money and expences.

Residence to be stated, or that he cannot be found. § 40.

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* The following forms will be of use to the profession and have therefore been extracted from Chitty's forms of proceedings under the statute.

FORMS.

Judge's order to revoke the Arbitrator's authority under 3 and 4 W. 4, c. 42, s. 39.

B. v D. (*or, In re A. B.* and *C. D.*) } Upon hearing the attornies or agents on both sides, and reading the affidavits of C. C. and D. D. I order that the said A. B. the plaintiff (or "Defendant") in this cause, shall be at liberty to revoke and make void the power and the authority of the arbitrator (or "umpire") to make his award (" or umpirage ") in the reference herein. Dated the day of 1838.

(Judge's Signature)

Affidavit to obtain a rule or Judge's order for Witness to attend before an Arbitrator and produce certain documents. (a)

Between A. B. plaintiff and C. D. defendant,

A. B. of maketh oath and saith, that on, &c. (*here state shortly the mode by which the cause or matters were referred, which if by an agreement may be thus*) A. B. and C. D. by an agreement in writing signed by them respectively agreed to submit certain matters in difference between them to the award of A. A. of ——, to be made on or before the ——, day of next, or such further day as he should appoint, and that by the said agreement it is agreed that the said submission to arbitration shall be made a rule of this Honorable Court. (*If the time has been enlarged, state the fact.*) And this deponent further saith, that the said A. A. hath taken the burthen of and is proceeding upon the reference, and that he hath made and signed an appointment for a meeting upon the said reference, a copy whereof, signed by the said A. A. is herewith annexed, and is signed with the proper hand writing of the said arbitrator. And this deponent further saith,

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(a) It seems that, in practice, this affidavit is not in general used, but in some cases, perhaps, the Judge might require it, and therefore the form is given. All that is in general required to be laid before the judge, before granting the order, is the certificate of the attorney who applies for it, as in the following form, and the appointment of the arbitrator for the attendance before him.

V. AND IT IS HEREBY ENACTED, that when in any rule or order of reference, or in any submission to arbitration, containing an agreement that the submission shall be ordered or agreed that the witnesses upon such reference shall be examined upon oath, it shall be lawful for the arbitrators or umpire, or any one arbitrator, and he or

Evidence before the arbitrator. § 41.

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that W. W. of ——, in the County of ——, is now residing at —— aforesaid, in the county of —— aforesaid. (*or if he cannot be found, state the fact, to satisfy the Court or Judge of that fact,*) and that he, this deponent, is informed and verily believes, that the said W. W. hath in his possession, custody, or power, an indenture, &c. (*here fully describe the document required.*) And this deponent further saith, that he is informed and advised, and verily believes that the said W. W. hath been and is and will continue to be a material and necessary witness for him, the said A. B. touching the matters so referred as aforesaid, and that it is and will be material and necessary that the said W. W. should attend and be examined and give evidence before the said arbitrator, and should produce in evidence the said document to and before the said arbitrator on the day of next, and that he the said A. A. hath not any just reason for refusing to attend and be examined, or for refusing to produce and have the said document read in evidence aforesaid, and that he, the said A. B. cannot safely proceed in the said arbitration without the evidence of the said W. W. and the production and reading of the said document by and before the said arbitrator. A. B.

Sworn, &c.

Certificate of the Attorney in the cause for that purpose.

Between *A. B.* plaintiff
and
C. D. defendant

I hereby certify, that J. P. a clerk of Messrs, —— of ——, is a material and necessary witness in the matter submitted to reference in this cause, and that it is necessary that he should attend at the Chambers of M. R. situate No. —— the arbitrator appointed in this cause on —— next, at —— o'clock in the morning, at which time and place the arbitrator has appointed a meeting herein, and that he should produce to the said arbitrator, at the time and place aforesaid, a book, &c., (specify the documents as you would in a *subpœna duces tecum*) dated —— .

P. A. Attorney for the Plaintiff.

Judge's order for the attendance of a witness with documents.

Between A. B. and C. D. (or "In re A. B. and C. D.") } Upon reading the affidavit of A. B. and reading the paper writing and appointment thereunto annexed, (*or* "upon reading the certificate of P. A. plaintiff's attorney herein,") I do order that W. W. of ——, in the county of —— (*or* "who at present cannot be found,") do attend before A. A. Esquire, the arbitrator, to whom this cause (*or* "matter") stands, referred on —— next, at —— o'clock in the evening of that day, and also on —— next at —— o'clock in the evening of that day at his chambers, situate at ——; and that the said W. W. do then and there submit to be duly sworn and

they are hereby authorized and required to administer an oath to such witnesses, or to take their affirmation in cases where affirmation is allowed by law instead of oath, and if upon such oath or affirmation any person making the same shall wilfully and corruptly give any false evidence, every person so offending shall be deemed and taken to be guilty of perjury, and shall be prosecuted and punished accordingly.

VI. AND IT IS HEREBY ENACTED, that this Act shall take effect in Calcutta from the day of its passing, and at Madras and Bombay after the expiration of thirty days from such day, and in the Straits settlements after the expiration of sixty days from such day.

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examined upon his oath by and before the said arbitrator as a witness on the behalf of the plaintiff in the matter of the said reference, and also then and there duly answer such lawful questions as shall then and there be put to him as such witness; and I do further order and command the said W. W. at the times and place afore-said, to take with him and produce and give evidence to and before the said arbitrator a certain indenture, &c, (*state the document as you would in a subpœna duces tecum,*) in pursuance of the statute in that case made and provided, and that the said W. W. fail not in the premises upon pain of his being deemed to have been guilty of a contempt of the said Court. Dated the —— day of —— 18.

Appointment by Arbitrator for attendance before him.

B. v. D. (*or* "*In re A. B. and C. D.*") } I appoint —— the —— day of —— next, at —— o'clock in the evening at —— and ——, the —— day of —— next at —— o'clock in the evening at the same place for proceeding in this reference. (*If there has been or is intended to be a rule or order for the attendance of a witness, &c. here say* "and I do hereby require you then and there to be sworn, &c. *proceed as in the rule or order, mutatis mutandis.*)

Dated the —— day of —— 18. A. A.

(The arbitrator's signature, or the signature of one or more of them, if more than one)

(See 2 Chit Ar. Pr. 1066.)

Summons to obtain Enlargement of the Time for making the award.

B. v. D. (*or* "*In re A. B. and C. D.*") } (*Commence as usual,*) to show cause why the term limited for the arbitrator making his award between the parties should not be enlarged until —— Dated the —— day of —— 18.

Order thereon.

B. v. D. (*or* "*In re A. B. and C. D.*") } Upon hearing the attornies on both sides, and upon reading the affidavits of C. C. and D. D. I do order that the term limited for the arbitrator making his award between the parties in this cause (*or* "matter") be enlarged until —— next.

Dated the —— day of —— 18

ACT No. XIII. OF 1840.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 29th June, 1840.

AN Act for the amendment of the Law regarding *Factors,* by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 4 Geo. IV. Ch. 83, as altered and amended by the Statute 6 Geo. IV. Ch. 94.

IT IS HEREBY ENACTED, that the Statute of the 4 Geo. IV. Cap. 83, as altered and amended by the Statute of 6 Geo. IV. Ch. 94, shall be extended to the territories of the East India Company; Provided always, that this Act shall not be construed to affect any case which would not have been governed by the law of England, before the passing of the aforesaid Statutes, if this Act had not passed; or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

The Statutes hereby extended to the territories of the East India Company, are as follows:

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4 GEO. IV. CAP. 83.

AN Act for the better protection of the property of merchants and others, who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandizes, intrusted to *Factors* or *Agents.*

[18*th July,* 1823.

"WHEREAS it has been found that the law, as it now "stands, relating to goods shipping in the names of "persons who are not the actual proprietors thereof, and "to the deposit or pledge of goods, affords great facility "to fraud, produces frequent litigation, and proves, "in its effects, highly injurious to the interest of com-"merce in general;" Be it therefore enacted by the

King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, any person or persons intrusted for the purpose of sale, with any goods, wares, or merchandize, and by whom such goods, wares, or merchandize shall be shipped, in his, her or their own name or names, or in whose name or names any goods, wares, or merchandize shall be shipped by other person or persons shall be deemed and taken to be the true owner or owners thereof, so far as to entitle the consignee or consignees of such goods, wares, and merchandize to a lien thereon, in respect of any money or negotiable security or securities advanced or given by such consignee or consignees to or for the use of the person or persons in whose name or names such goods, wares, or merchandize shall be shipped, or in respect of any money or negotiable security or securities received by him, her or them to the use of such consignee or consignees, in the like manner to all intents and purposes as if such person or persons was or were the true owner or owners of such goods, wares and merchandize; provided such consignee or consignees shall not have notice, by the bill of lading for the delivery of such goods, wares or merchandize or otherwise, at or before the time of any advance of such money or negotiable security, or of such receipt of money or negotiable security in respect of which such lien is claimed, that such person or persons so shipping in his, her or their own name or names, or in whose name or names any goods, wares or merchandize shall be shipped by any person or persons, is or are not the actual and *bona fide* owner or owners, proprietor or proprietors of such goods, wares and merchandize, so shipped as aforesaid, any law, usage or custom to the contrary thereof in any wise notwithstanding: Provided also, that the person or persons in whose name or names any such goods, wares or merchandize are so shipped as aforesaid, shall be taken for the purposes of this Act to have been intrusted therewith, unless the contrary thereof

Persons, in whose names goods shall be shipped, shall be deemed the owners, so as to entitle consignees to a lien thereon as herein mentioned.

shall appear or be shewn in evidence by any person disputing such fact.

II. AND BE IT FURTHER ENACTED, that it shall be lawful to and for any person or persons, body or bodies, politic or corporate, to accept and take any goods, wares or merchandize, or the bill or bills of lading for the delivery therof, in deposit or pledge from any consignee or consignees thereof; but then and in that case such person or persons, body or bodies, politic or corporate, shall acquire no further or other right, title or interest, in or upon or to the said goods, wares or merchandize, or any bill of lading for the delivery thereof than was possessed, or could or might have been enforced by the said consignee or consignees at the time of such deposit or pledge as a security as aforesaid: but such person or persons, body or bodies, politic or corporate, shall and may acquire, possess and enforce such right, title, or interest, as was possessed and might have been enforced, by such consignee or consignees at the time of such deposit or pledge as aforesaid, any rule or law, usage or custom to the contrary notwithstanding.

Any person may take goods or bill of lading in deposit from consignee, but shall not acquire any further right than consignee possessed.

III. PROVIDED ALWAYS, that nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true owner or owners, proprietor or proprietors of such goods, wares or merchandize, from demanding and recovering the same from his, her, or their factor or factors, agent or agents, before the same shall have been so deposited or pledged or from the assignee or assignees of such factor or factors, agent or agents, in the event of his, her, or their bankruptcy; nor to prevent any such owner or owners, proprietor or proprietors, from demanding or recovering of, and from any person or persons, or of or from the assignees of any person or persons, in case of his or her bankruptcy, or of or from any body or bodies, politic or corporate, such goods, wares, or merchandize so consigned, deposited, or pledged, upon repayment of the money or on restoration of the negotiable security or securities or on payment of a sum of money equal to the amount of such security or securities, for which money or negotiable security or

Right of owner to follow his goods while in the hands of his agent or of his assignees in case of bankruptcy, or to recover them from assignees, &c. upon paying his advances secured upon them, &c.

securities, such person or persons, his, her, or their assignee or assignees, or such body or bodies, politic or corporate, may be entitled to any lien upon such goods, wares, or merchandize, nor to prevent the said owner or owners, proprietor or proprietors, from recovering of and from such person or persons, body or bodies, politic or corporate, any balance or sum of money remaining in his, her, or their hands, as the produce of the sale of such goods, wares, or merchandize, after deducting thereout the amount of the money or negotiable security or securities so advanced or given upon the security thereof as aforesaid. Provided always, that in case of the bankruptcy of such factor or agent, the owner of the goods so pledged and redeemed as aforesaid, shall be held to have discharged *pro tanto* the debt due by him to the bankrupt's estate.

Proviso as to bankruptcy of factor

6TH GEO. IV. CAP. 94.

An Act to alter and amend an Act for the better protection of the property of merchants and others, who may hereafter enter into contracts or agreements in relation to goods, wares, or merchandizes, intrusted to *Factors or Agents* *

"WHEREAS an Act passed in the fourth year of the "reign of His present Majesty, intituled *An Act for the "better protection of the property of merchants and "others who may hereafter enter into contracts or "agreements in relation to goods, wares, or merchan-"dizes intrusted to factors or agents*: And whereas it "is expedient to alter and amend the said Act, and to "make further provisions in relation to such contracts or "agreements, as hereinafter provided": Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, any person or persons intrusted for the purpose of consignment, or of sale, with any goods, wares, or merchandize, and who shall have

4 G 4, c 83.

Factors or persons having goods or merchandize in their possession, shall be

* See Smith's Mercantile Law, p 100, and Morton's Vendors and Purchasers, *passim*.

shipped such goods, wares, or merchandize in his, her, or their own name or names, and any person or persons in whose name or names any goods, wares, or merchandize shall be shipped by any other person or persons, shall be deemed and taken to be the true owner or owners thereof, so far as to entitle the consignee or consignees of such goods, wares, and merchandize to a lien thereon, in respect of any money or negotiable security or securities advanced or given by such consignee or consignees, to or for the use of the person or persons in whose name or names such goods, wares, or merchandize shall be shipped, or in respect of any money or negotiable security or securities received by him, her, or them, to the use of such consignee or consignees, in the like manner to all intents and purposes, as if such person or persons was or were the true owner or owners of such goods, wares, and merchandize, provided such consignee or consignees shall not have notice by the bill of lading for the delivery of such goods, wares or merchandize, or otherwise, at or before the time of any advance of such money or negotiable security, or of such receipt of money or negotiable security in respect of which such lien is claimed, that such person or persons so shipping in his, her, or their own name or names, or in whose name or names any goods, wares, or merchandize shall be shipped by any person or persons, is or are not the actual and *bona fide* owner or owners, proprietor or proprietors of such goods, wares, and merchandize, so shipped as aforesaid, any law, usage, or custom to the contrary thereof in any wise notwithstanding: Provided also, that the person or persons in whose name or names any such goods, wares or merchandize are so shipped as aforesaid, shall be taken, for the purpose of this Act, to have been intrusted therewith, for the purpose of consignment or of sale, unless the contrary thereof shall be made to appear by bill of discovery or otherwise, or be made to appear or be shown in evidence by any person disputing such fact.

deemed to be true owners, so as to give validity to contracts with persons dealing *bona fide* upon the faith of such property.

II. AND BE IT FURTHER ENACTED, that from and after the first day of *October*, one thousand eight hundred and twenty-six, any person or persons intrusted with and

Persons in possession of bills of lading, &c, to be

the owners so far as to make valid contracts.

in possession of any bill of lading, *India* warrant, dock warrant, warehouse keeper's certificate, wharfinger's certificate, warrant or order for delivery of goods, shall be deemed and taken to be the true owner or owners of the goods, wares and merchandize described and mentioned in the said several documents herein-before stated respectively, or either of them, so far as to give validity to any contract or agreement thereafter to be made or entered into by such person or persons so intrusted and in possession as aforesaid, with any person or persons, body or bodies, politic or corporate, for the sale or disposition of the said goods, wares and merchandize, or any part thereof, or for the deposit or pledge thereof, or any part thereof, as a security for any money or negotiable instrument or instruments advanced or given by such person or persons, body or bodies, politic or corporate, upon the faith of such several documents or either of them; provided such person or persons, body or bodies, politic or corporate, shall not have notice by such documents, or either of them, or otherwise, that such person or persons so intrusted as aforesaid, is or are not the actual and *bonâ fide* owner or owners, proprietor or proprietors of such goods, wares, or merchandize, so sold or deposited or pledged as aforesaid; any law, usage, or custom to the contrary thereof in any wise notwithstanding.

No person to acquire a security upon goods in the hands of an agent for an antecedent debt, beyond the amount of the agent's interest in the goods.

III. PROVIDED ALWAYS, and be it further enacted, that in case any person or persons, body or bodies, politic or corporate, shall, after the passing of this Act, accept and take any such goods, wares, or merchandize, in deposit or pledge from any such person or persons so in possession and intrusted as aforesaid, without notice as aforesaid, as a security for any debt or demand, due, and owing from such person or persons so intrusted and in possession as aforesaid, to such person or persons, body or bodies, politic or corporate, before the time of such deposit or pledge, then and in that case, such person or persons, body or bodies, politic or corporate, so accepting or taking such goods, wares, or merchandize in deposit or pledge, shall acquire no further or other right, title

or interest in or upon or to the said goods, wares, or merchandize, or any such document as aforesaid than was possessed, or could or might have been enforced by the said person or persons so possessed and intrusted as aforesaid, at the time of such deposit or pledged as a security as last aforesaid; but such person or persons, body or bodies, politic or corporate, so accepting or taking such goods, wares, or merchandize in deposit or pledge, shall and may acquire, possess, and enforce such right, title, or interest as was possessed and might have been enforced by such person or persons so possessed and intrusted as asforesaid; any rule of law, usage, or custom to the contrary notwithstanding.

IV. AND BE IT FURTHER ENACTED, that from and after the first day of *October*, one thousand eight hundred and twenty-six, it shall be lawful to and for any person or persons, body or bodies, politic or corporate, to contract with any agent or agents, intrusted with any goods, wares, or merchandize, or to whom the same may be consigned, for the purchase of any such goods, wares, merchandize, and to receive the same of and pay for the same to such agent or agents; and such contract and payment shall be binding upon and good against the owner of such goods, wares, and merchandize, notwithstanding such person or persons, body or bodies, politic or corporate, shall have notice that the person or persons making and entering into such contract, or on whose behalf such contract is made or entered into, is an agent or agents; provided such contract and payment be made in the usual and ordinary course of business, and that such person or persons, body or bodies, politic or corporate, shall not, when such contract is entered into or payment made, have notice that such Agent or Agents is or are not authorized to sell the said goods, wares, and merchandize, or to receive the said purchase money.

Persons may contract with known agents in the ordinary course of business if no notice that agent is not authorised to sell or receive price

V. AND BE IT FURTHER ENACTED, that from and after the passing of this Act, it shall be lawful to and for any person or persons, body or bodies, politic or corporate,

Persons may accept and take goods &c. in pledge from known agents, but

In that case shall acquire no further interest than was possessed by such agent at the time of such pledge

to accept and take any such goods, wares, or merchandize, or any such document as aforesaid, in deposit or pledges from any such factor or factors, agent or agents, notwithstanding such person or persons, body or bodies, politic or corporate, shall have such notice as aforesaid, that the person or persons making such deposit or pledge is or are a factor or factors, agent or agents; but then and in that case such person or persons, body or bodies, politic or corporate, shall acquire no further or other right, title, or interest in or upon or to the said goods, wares, or merchandize, or any such document as aforesaid, for the delivery thereof, than was possessed or could or might have been enforced by the said factor or factors, agent or agents, at the time of such deposit or pledge as a security as last aforesaid; but such person or persons, body or bodies, politic or corporate, shall and may acquire, possess, and enforce such right, title, or interest as was possessed and might have been enforced by such factor or factors, agent or agents, at the time of such deposit or pledge as aforesaid; any rule of law, usage or custom to the contrary notwithstanding.

Right of the true owner to follow his goods while in the hands of his agent or of his assignee in case of bankruptcy, or to recover them from a third person, upon paying his advances secured upon them

VI. PROVIDED ALWAYS, and be it enacted, that nothing herein contained shall be deemed, construed, or taken to deprive or prevent the true owner or owners, or proprietor or proprietors, of such goods, wares, or merchandize, from demanding and recovering the same from his, her, or their factor or factors, agent or agents, before the same shall have been so sold, deposited, or pledged, or from the assignees of such factor or factors, agent or agents, in the event of his, her, or their bankruptcy; nor to prevent such owner or owners, proprietor or proprietors, from demanding or recovering of and from any person or persons, body or bodies, politic or corporate, the price or sum agreed to be paid for the purchase of such goods, wares, or merchandize, subject to any right of set-off on the part of such person or persons, body or bodies, politic or corporate, against such factor or factors, agent or agents; not to prevent such owner or owners, proprietor or proprietors, from

demanding or recovering of and from such person or persons, body or bodies, politic or corporate, such goods wares or merchandize so deposited or pledged, upon repayment of the money, or on restoration of the negotiable instrument or instruments so advanced or given on the security of such goods, wares or merchandize as aforesaid, by such person or persons, body or bodies, politic or corporate, to such factor or factors, agent or agents; and upon payment of such further sum of money, or on restoration of such other negotiable instrument or instruments (if any) as may have been advanced or given by such factor, or agent or agents, to such owner or owners, proprietor or proprietors, or on payment of a sum of money equal to the amount of such instrument or instruments; nor to prevent the said owner or owners, proprietor or proprietors, from recovering of and from such person or persons, body or bodies, politic or corporate, any balance or sum of money remaining in his, her or their hands, as the produce of the sale of such goods, wares or merchandize, after deducting thereout the amount of the money or negotiable instrument or instruments so advanced or given upon the security thereof as aforesaid: Provided always, that in case of the bankruptcy of any such factor or agent, the owner or owners, proprietor or proprietors of the goods, wares, and merchandize so pledged and redeemed as aforesaid, shall be held to have discharged *pro tanto* the debt due by him, her, or them to the estate of such bankrupt.

In case of bankruptcy of factor, owner shall be held to have discharged *pro tanto* the debt due from him to bankrupt.

VII. "AND WHEREAS it is expedient to prevent the improper deposit or pledge of goods, wares, or merchandize, or the documents relating to such goods, wares or merchandize, intrusted or consigned as aforesaid, to factors or agents;" Be it therefore enacted, that if any such factors or agents, at any time from and after the said first day of *October*, one thousand eight hundred and twenty six, shall deposit or pledge any goods, wares or merchandize, intrusted or consigned as aforesaid, to his or her care or management, or any of the said several documents so possessed or intrusted as aforesaid, with any person or persons, body or bodies, politic or corporate,

Agents fraudulently pledging the goods of their principals, deemed guilty of a misdemeanor

as a security for any money or negotiable instrument or instruments borrowed or received by such factor or agent and shall apply or dispose thereof to his or her own use, in violation of good faith, and with intent to defraud the owner or owners of any such goods, wares, or merchandize, every person so offending, in any part of the United Kingdon, shall be deemed and taken to be guilty of a misdemeanor, and being convicted thereof according to law, shall be sentenced to transportation for any term not exceeding fourteen years, or to receive such other punishment as may by law be inflicted on persons guilty of a misdemeanor, and as the Court, before whom such offender may be tried and convicted, shall adjudge.

May be transported not exceeding fourteen years, &c.

VIII. PROVIDED ALWAYS, and be it further enacted, that nothing herein contained shall extend or be construed to extend to subject any person or persons to prosecution, for having deposited or pledged any goods, wares, or merchandize so intrusted or consigned to him, her or them, provided the same shall not be made a security for or subject to the payment of any greater sum or sums of money than at the time of such deposit or pledge was justly due and owing to such person or persons from his, her or their principal or principals: Provided nevertheless that the acceptances of bills of exchange by such persons drawn by or on account of such principal or principals, shall not be considered as constituting any part of such debt so due, and owing from such principal or principals within the true intent and meaning of this Act, so as to excuse the consequence of such a deposit or pledge, unless such bills shall be paid when the same shall respectively become due.

Not to extend to cases in which the agent has not made the goods a security for any sum beyond the extent of his own lien.

Acceptances of bills by an agent not to create a lien so as to excuse the pledge unless the bills are paid when due.

IX. PROVIDED ALSO, and be it further enacted, that the penalty by this Act annexed to the commission of any offence intended to be guarded against by this Act, shall not extend or be construed to extend to any partner or partners, or other person or persons of or belonging to any partnership, society, or firm, except only such parther or partners, person or persons, as shall be

Act not to extend to partners not being privy to the offence.

accessary or privy to the commission of such offence; any thing herein contained to the contrary in any wise notwithstanding.

X. PROVIDED ALSO, and be it further enacted, that nothing in this Act contained, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall hinder, prevent, lessen, or impeach any remedy at law or in equity, which any party or parties aggrieved by any offence against this Act, might or would have had or have been entitled to against any such offender, if this Act had not been made, nor any proceeding, conviction or judgment had been had or taken thereupon, but nevertheless, the conviction of any offender against this Act shall not be received in evidence in any action at law or suit in equity against such offender. And further, that no person shall be liable to be convicted by any evidence whatever as an offender against this Act, in respect of any act, matter, or thing done by him, if he shall at any time previously to his being indicted for such offence have disclosed any such matter or thing on oath under or in consequence of any compulsory process of any Court of law or equity, in any action, suit, or proceeding, in or to which he shall have been a party, and which shall have been *bona fide* instituted by the party aggrieved by the act, matter or thing, which shall have been committed by such offender aforesaid.

Act not to lessen any remedy at law or equity which the party aggrieved, may be entitled to adopt.

Conviction not evidence in action against offender.

Offender not liable after disclosure.

ACT. No. XIV. OF 1840.

Passed by the Right Hon'ble the Governor-General of India in Council, on the 29th June, 1840.

AN Act for rendering a *written Memorandum* necessary to the validity of certain promises and engagements by extending to the territories of the East India Company, in cases governed by English law, the provisions of the Statute 9, Geo. IV., Ch. 14.

IT IS HEREBY ENACTED, that the Statute 9, Geo. IV. Ch 14, shall be extended to the territories of the East India Company; Provided always, that this Act shall not be construed to affect any case, which would not have been governed by the law of England, before the passing of the aforesaid Statute, if this Act had not passed; or to extend or alter the jurisdiction of any of Her Majesty's Courts of Justice.

The Statute hereby extended to the territories of the East India Company, is as follows, (the sum of £10 mentioned therein to be deemed 100 rupees in the application of the Statute to the aforesaid territoties.)

9 GEO. IV. CAP. 14.

AN Act for renderinga *written Memorandum* necessary to the validity of certain promises and engagements.* [*9th May*, 1828.

English Act 21, Jas. I c. 16.

"WHEREAS by an Act passed in England in the "twenty-first year of the reign of King James the first, "it was, among other things enacted, that all actions of "account and upon the case, other than such accounts "as concern the trade of merchandize between merchant "and merchant, their factors or servants, all actions of "debt grounded upon any lending or contract without "specialty, and all actions of debt for arrearages of rent, "should be commenced within three years after the end "of the then present Session of Parliament, or within "six years next after the cause of such actions or suit, "and not after. And whereas a similar enactment is "contained in an Act passed in Ireland, in the tenth year "of the reign of King Charles the First."

Irish Act 10, Car I, Sess. 2, c 6.

"AND WHEREAS various questions have arisen in ac-"tions founded on simple contract, as to the proof and "effect of acknowledgments and promises offered in "evidence for the purpose of taking cases out of the ope-"ration of the said enactments; and it is expedient to pre-"vent such questions and to make provision for giving

* See Martin's treatise on this act, commonly called Lord Tenterden's act, and Morton's Vendors and Purchasers, *passim*.

"effect to the said enactments and to the intention thereof." Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords spiritual, and temporal and Commons, in the present Parliament assembled, and by the authority of the same. That in actions of debt or upon the case grounded upon any simple contract, no acknowledgment or promise by words only shall be deemed sufficient evidence of a new or continuing contract, whereby to take any case out of the operation of the said enactments, or either of them, or to deprive any party of the benefit thereof, unless such acknowledgment or promise shall be made or contained by or in some writing to be signed by the party chargeable thereby, and that where there shall be two or more joint contractors, or executors or administrators of any contractor, no such joint contractors, executor, or administrator, shall lose the benefit of the said enactments, or either of them, so as to be chargeable in respect or by reason only by any written acknowledgment or promise, made and signed by any other or others of them: Provided always, that nothing herein contained shall alter or take away or lessen the effect of any payment of any principal or interest made by any person whatsoever: Provided also, that in actions to be commenced against two or more such joint contractors, or executors or administrators, if it shall appear at the trial or otherwise that the plaintiff, though barred by either of the said recited Acts or this Act, as to one or more of such joint contractors, or executors or administrators, shall nevertheless be entitled to recover against any other or others of the defendants, by virtue of a new acknowledgment or promise, or otherwise, judgment may be given and costs allowed for the plaintiff as to such defendant or defendants against whom he shall recover, and for the other defendant or defendants against the plaintiff.

In actions of debt or upon the case, no acknowledgement shall be deemed sufficient unless it be in writing, or by part payment.

Joint contractors.

Proviso as to the judgment in case of joint contractors.

II. AND BE IT FURTHER ENACTED, that if any defendant or defendants, in any action on any simple contract,

Pleas in abatement.

shall plead any matter in abatement, to the effect that any other person or persons ought to be jointly sued and issue be joined on such plea, and it shall appear at the trial that the action could not, by reason of the said recited Acts, or this Act, or of either of them, be maintained against the other person or persons named in such plea, or any of them, the issue joined on such plea shall be found against the party pleading the same.

Indorsement of payment.

III. AND BE IT FURTHER ENACTED, that no indorsement or memorandum of any payment, written or made after the time appointed for this Act to take effect, upon any promissory note, bill of exchange, or other writing by or on the behalf of the party to whom such payment shall be made, shall be deemed sufficient proof of such payment so as to take the case out of the operation of either of the said Statutes.

Simple contract debts alleged by way of set-off.

IV. AND BE IT FURTHER ENACTED, that the said recited Acts and this Act shall be deemed and taken to apply to the case of any debt on simple contract, alleged by way of set-off on the part of any defendant, either by plea, notice, or otherwise.

Comfirmation of promises made by infants.

V. AND BE IT FURTHER ENACTED, that no action shall be maintained whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification after full age of any promise or simple contract made during infancy, unless such promise or ratification shall be made by some writing signed by the party to be charged therewith.

Representations of character.

VI. AND BE IT FURTHER ENACTED, that no action shall be brought whereby to charge any person upon or by reason of any representation or assurance made or given, concerning or relating to the character, conduct, credit, ability, trade or dealings of any other person, to the intent or purpose that such other person may obtain credit, money or goods *upon*, unless such representation or assurance be made in writing, signed by the party to be charged therewith.

VII.* "AND WHEREAS, by an Act passed in England in the *twenty-ninth* year of the reign of King Charles the Second, intituled *An Act for the prevention of frauds and perjuries*, it is, among other things, enacted, that from and after the twenty-fourth day of June, one thousand six hundred and seventy-seven, no contract for the sale of any goods, wares and merchandizes, for the price of *ten* pounds sterling or upwards, shall be allowed to be good, except the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part of payment; or that some note or memorandum in writing of the said bargain be made and signed by the parties to be charged by such contract, or their agents thereunto lawfully authorized." "And whereas a similar enactment is contained in an Act passed in Ireland in the *seventh* year of the reign of King William the *Third*." "And whereas it has been held that the said recited enactments do not extend to certain executory contracts for the sale of goods which nevertheless are within the mischief thereby intended to be remedied; and it is expedient to extend the said enactments to such executory contracts;" Be it enacted, that the said enactments shall extend to all contracts for the sale of goods of the value of *ten pounds* sterling and upwards, notwithstanding the goods may be intended to be delivered at some future time, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

29 Car. 2, C. 3.

Irish Act 7. W. 3, c. 12.

Powers of recited Acts extended to contracts for goods of 10*l.* or upwards, although delivery not made.

VIII. AND BE IT FURTHER ENACTED, that no memorandum or other writing made necessary by this Act shall be deemed to be an agreement within the meaning of any Statute relating to the duties of stamps.

Memorandum exempted from stamps.

ACT No. XVI. OF 1840.

Passed by the Right Hon'ble the Governor General of India in Council on the 3d of August, 1840.

An Act concerning the, *management of Convicts transported* to places within the territories of the East India Company.

Preamble.

I. WHEREAS doubts have arisen touching the legal mode of treating Convicts transported to places within the territories of the East India Company, and it is expedient to modify the rules which have heretofore been followed with regard to the management of such Convicts;

Property in service of Convicts to vest in person appointed by Governor General in Council.

It is hereby declared and enacted, that as soon as any offender shall be delivered to the person or persons to be appointed by the Governor General in Council on that behalf at the place to which he is transported, the property in the service of such offender shall be vested in such person or persons during the term of transportation.

Governor General in Council may appoint to whom Convict to be delivered, &c.

II. And it is hereby declared and enacted, that it shall be lawful for the Governor General in Council to appoint the Governor or other Authority at any place within the territories of the East India Company, or to appoint one or more Superintendents at any such place, as the persons to whom Convicts undergoing transportation shall be delivered and in whom the property in the service of such Convicts shall be vested as aforesaid.

And issue orders and frame rules for management of Convicts.

III. And it is hereby declared and enacted, that it shall be lawful for the Governor-General in Council to issue orders from time to time to any such Governor, Authority, or Superintendent, and which orders are hereby required to be duly executed, and to frame rules touching the classification of Convicts, their confinement, treatment, and discipline, and touching such moderate correction as may be necessary in cases of misbehaviour and disorderly conduct, and of neglect or

disobedience in the service of those persons in whom the property of such service may be vested as aforesaid.

Act to extend to Convicts whose terms have not expired.

IV. And it is hereby declared and enacted, that all persons who have heretofore been transported to any place within the territories of the East India Company, and whose terms of transportation are not yet expired, shall be subject to the provisions contained in this Act, and nothing heretofore done with respect to offenders who have been so transported in conformity with the provisions of this Act, or by the orders, or with the sanction of Government, shall be called in question in any Court of law.

THE

RULES AND ORDERS

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL,

AND OF

The Court for the Relief of Insolvent Debtors,

TO WHICH ARE PREFIXED,

THE CHARTER OF JUSTICE, STATUTES, AND ACTS OF THE GOVERNMENT OF INDIA, RELATING TO THE SAID COURTS.

Edited by

W. H. SMOULT AND E. B. RYAN, ESQRS.

WITH THE SANCTION OF

THE HON. THE CHIEF JUSTICE.

IN TWO VOLUMES.

VOL. II.

CONTAINING THE RULES AND ORDERS, WITH NOTES, AND THE TABLES OF FEES OF THE SAID COURTS.

WITH AN APPENDIX,

COMPRISING THE ADMIRALTY COMMISSION, ABSTRACTS OF CHARTERS 13 GEO. I. AND 26 GEO. II.—THE PROCLAMATION FIXING THE LIMITS OF CALCUTTA, THE PROCLAMATIONS AS TO THE JURISDICTION OF THE COURT OF REQUESTS, THE COMMISSIONS OF THE PEACE, THE CHARGES OF CHIEF JUSTICE RYAN TO THE GRAND JURY IN 1829, 1838, AND 1839, &c. &c.

AND AN INDEX TO BOTH VOLUMES.

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THE

RULES AND ORDERS

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL,

MADE AND PASSED

ON THE 15TH DAY OF JUNE 1837,

TO TAKE EFFECT

ON THE 22ND DAY OF OCTOBER IN THE SAME YEAR.

GENERAL RULES.

RULES AND ORDERS

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL.

GENERAL RULES.

THAT the general qualification for admission as an Advocate of this Court be, that the applicant shall produce a certificate of having been called to the bar in England, or Ireland, or of being entitled to practice as an advocate in the principal Courts of Scotland, except the Judges shall see fit to dispense with the same. And, in all cases, the applicant must produce satisfactory testimonials to his good character and ability.

Qualification for admission as an Advocate.

See Charter, § 11 and former Plea Rule 96. and see 3 & 4 W. 4. c 85, § 115.

2. That the qualification for admission as an Attorney of this Court be, that the applicant has been admitted an attorney of one of her Majesty's principal Courts of Record in England, or Ireland, or a writer to the Signet in Scotland, or a member of the Society of Solicitors practising before the Court of Session there, or that he has served a regular Clerkship of five years, under a contract in writing, unto some attorney practising in this Court; or, that he is, or has been a principal Clerk to one of the Judges of this Court; and, in all cases, the applicant must produce satisfactory testimonials to his good character

Qualification for admission as an Attorney.

and ability; and shew, that he has reasonable expectations of advancing himself in his profession; Provided always, that no person shall act at the same time, as an attorney of the Court, and as principal clerk to any of the Judges.

See references to preceding Rule.

Advocates to take oath of allegiance.

3. That every advocate, before he be admitted, and his name enrolled in this Court, shall take the oath of allegiance.

See former Pl. R. 1.

Oaths to be taken by Officers of court.

4. That every officer of this Court, before his admission to his office, do take the oath of allegiance, and likewise an oath that he will duly and honestly execute his office, according to the best of his knowledge and ability.

See former Pl. R. 2.

Oaths by Attorney and Proctor.

5. That every attorney and proctor, before he be admitted, and have his name enrolled, do take the oath of allegiance, and likewise an oath that he will truly and honestly demean himself in the practice of an attorney or proctor, as the case may be, according to the best of his knowledge and ability.

See former Pl. R. 3.

Attendance of Master, and other officers of Court.

6. That the Master do attend this Court whenever thereunto called upon by the Court, and that the Sheriff, or his deputy do give daily attendance during such time as this Court shall be sitting, and that the several clerks and officers of this Court do constantly and daily attend in their places, whilst the Court is sitting in that department of its business, to which their offices do respectively belong.

See former Pl. Rs. 4. 78.

Office hours.

7. It is ordered, that the respective offices of the Clerk of the Crown, Equity Registrar, Ecclesiastical Registrar, Examiner, Prothonotary, Sworn Clerk, Clerk of the Papers, and Sealer of this Court, be open for the dispatch of business from the hour of ten in the morning until five in the afternoon, in term time, and from the hour of ten in the forenoon until four in the afternoon, in vacation; and it is further ordered, that a copy of this order be affixed in some conspicuous part of each of the said offices, in the English and Bengallee languages.

See former Pl R. 99.

Record Keeper to keep all Records, and class and docket same.

8. That the Record Keeper shall safely keep all records and muniments delivered to him, and shall class them in a regular order, that recourse may be speedily had thereto, and shall also keep a book in which he shall

make dockets of the names of the parties, their Attornies, and the number of the Roll, and shall also keep an alphabetical list of the names of the parties.

See former Pl. R. 71.

9. That all copies of proceedings and records of the court, shall be made out by the officer in whose custody the said proceedings and records shall be, at the time the said copies are applied for.

Copies of proceedings to be made by Officer having custody thereof.
See same Rule.

10. That every Deputy appointed by the Sheriff shall, within one day after his appointment, fix up a note, containing his name and his office, and particularly describing his place of abode, in a conspicuous part of the court room, wherein this court shall usually sit; as also in the respective offices of the prothonotary, and the several registrars of this court, to remain in such places during all the time he shall continue in office.

Dep. Sheriff to affix his name, &c. in Court room and Office of Prothonotary and Registrars.

See former Pl. R. 7.

11. That every party who shall not act or appear by attorney, and every attorney of this court, do enter his name and place of abode, particularly described in a book to be kept by the prothonotary, or the registrar, in whose office his business shall be transacted; and the service of all rules, orders, and notices, (where not otherwise ordered by this court, or a Judge of this court,) shall be made on any person who shall be found at such place, so entered; or if there be no person to be found at such place, or if no such entry shall be made, then the leaving such rules, orders, or notices, in the office of the prothonotary, or such registrar as is aforementioned, shall be deemed good, service on such party or attorney.

Party not appearing by Attorney, and every Attorney to enter his name, &c. in book kept by Prothonotary or Registrar, and service of rules, &c. accordingly.

How, if no person found, &c.

See former Pl. R. 8.

12. That in all causes, and all other business in this court, the party himself may be heard; and that when an advocate can be procured, no party shall be heard in this court by his attorney; but where the party can procure no advocate, his attorney may be heard on his behalf, and may do all and every act which by the rules of this court are, or may be required to be done by an advocate, and that the party or attorney who shall be heard, do in all things conform to the rules laid down for the conduct of advocates.

Party may be heard in person, but not to be heard by Attorney, if an Advocate can be procured.

See former Pl. R. 45.

No Attorney to permit any but an Attorney, to practise in his name.
See former Pl. R. 10.

13. That no attorney of this court do permit any person whatsoever, except another attorney of the same to practise, or do any act whatsoever in this court in his name.

No cause, &c. commenced or defended by paupers by order of Court, or a Judge, to be compromised without leave.

See former Pl. R. 79.

14. That no cause, prosecution, suit, or matter commenced or defended, or ordered to be commenced or defended, or which shall, in future, be commenced or defended, or ordered to be commenced or defended by paupers, in consequence of any petition presented to this court, or any Judge thereof, or of any order of this court, or a Judge thereof, be compromised on any account whatsoever, without leave, for that purpose, being first had and obtained, by motion in court in term time, or from a Judge in vacation.

No Attorney to be changed without leave of Court, or Judge.
See former Pl. R. 95.

15. It is ordered, that no suitor of this court be at liberty to change his, her, or their attorney in any cause, without leave of the court for that purpose, first had and obtained in term time, or of a Judge in vacation.

Attorney departing jurisdiction without leave, and resident thereout for a year, or ceasing to practise for a year, or appearing to have quitted the profession to be struck off the roll.
Officers to report, on first day of term, names of such Attornies, but no one to be struck off without 14 days' notice being affixed, &c.

16. It is ordered, that the name of every attorney or proctor of this court, who shall hereafter depart out of the limits of the jurisdiction of this court, without leave of this court, first had and obtained, and shall remain resident without the same for the space of one year, and of every attorney or proctor, who by ceasing to practise and attend on this Court for the space of one year, or who for any other cause, shall appear to have quitted the profession of an attorney and proctor of this court, shall be struck off the roll; and it is further ordered, that the Clerk of the Crown, the Registrar of the Equity, Ecclesiastical, and Admiralty sides of this court, and the Prothonotary of this court, do, on the first day of every Term, report to the court the names of such attornies or proctors, as shall appear to them to fall under this rule; provided nevertheless, that the name of no attorney or proctor shall, by virtue of this rule, be struck off from the said roll, until notice in writing shall have been stuck up in the several offices of the Clerk of the Crown, the Registrar of the Ecclesiastical, Equity, and Admiralty jurisdiction, and of the Prothonotary of this court, for the space of fourteen days, containing the

reason why such name is intended to be struck off, and requiring the attorney and proctor to shew cause within that time, why such name should not be struck off the said rôll.

See former Pl. R. 86.

17. Except by special order of the Court, no Warrant of Attorney shall be filed, unless it be signed by each person by whom it purports to be given; nor if there be any mark instead of signature, unless together with the warrant, there be filed an affidavit of the due execution thereof: nor, if there be any signature by procuration, unless there either be some sufficient written authority, or duly attested copy thereof, filed at the same time as the warrant, together with an affidavit of the due execution of the original, or at least, of the hand-writing of the party who hath signed the same; or in case the warrant be signed by a native Gomastah or Mooktear, acting for his principal, without any written authority, unless there be an affidavit filed by the party who signs the warrant, explaining the nature of the authority under which he acts. Provided always, that nothing herein contained shall prevent any one partner of any mercantile firm or partnership in trade, from signing any warrant of attorney on behalf of himself and partners, when he would otherwise have been lawfully entitled so to do.

Warrants of Attorney, how to be signed and filed.

If mark instead of signature.

Where by procuration.

By Native Gomastah or Mooktear.

Proviso as to partners.

See former Pl. R. 110, of 1829.

18. That in every plaint, bill, libel, articles, or other matter, whereby any suit shall be commenced in this court, and any demand made of any debt, duty, or damages, or complaint of any injury, and that in every indictment, information, or presentment, to be prosecuted in this court, there be contained not only a clause in which it shall be averred, that the defendant or defendants to the said suit, is or are a person or persons subject to the jurisdiction of this court, but that it be also specially stated by what means the defendant or defendants is or are subject to the said jurisdiction. (1)

Clause to be inserted in every plaint, bill, indictment, &c., that defendant is subject to the jurisdiction, and by what means.

See former Pl. R. 26.

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(1) The 29th Rule of 1774, directed that every plaint, &c. "should contain "an averment that the defendant was subject to the jurisdiction of the Court, but "that *it should not be necessary to state specially by what means he was* "*subject to the jurisdiction;* and that a defendant should not, *after having*

How days are to be reckoned.

19. That in all cases in which any particular number of days, not expressed to be clear days, is prescribed by the rules or practise of this court, the same shall be reckoned exclusively of the first day, and inclusively of the last day, unless the last day shall happen to fall on a Sunday, Christmas-day, or Good-Friday, in which case the time shall be reckoned exclusively of that day also.

See former Pl: R. 11. and 2. W. IV. c. 39.

All writs, rules, &c. to be made out, by officer issuing same, in the name of the Queen, having

20. That all writs, precepts, rules, orders, and mandatory process, concerning any matter appertaining to the common law, equity, ecclesiastical, admiralty or criminal jurisdiction of this court, be prepared and made out, by the officer to whom it shall belong to prepare and

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" *pleaded any other plea than a plea to the jurisdiction*, or after any im- " parlance granted, be permitted, without the special license of the Court, to " plead or *otherwise object* to the jurisdiction "—This rule was altered after the passing of the 21 G. 3. c. 70. viz. on the 19th July 1782, in the sittings after the 3rd term of that year, and the 26th Rule in Mr. Clarke's edition is the rule as altered. It does not appear to have been the practice at Madras or Bombay to call upon the plaintiff (except in *exparte* cases) to prove the jurisdiction, unless the defendant gave notice of his intention to dispute it. In all actions and suits, the plaint, or bill must contain a special averment of the manner in which the defendant is subject to the jurisdiction, and no process can issue, from any of the Supreme Courts, without an affidavit made, to the satisfaction of the Court, or a Judge, that the party against whom process is sought is subject to the jurisdiction; to require, in addition to this averment, and affidavit, that the plaintiff shall also prove, in the first instance, at the trial, that the defendant is subject to the jurisdiction, though no intention has been expressed of disputing that fact, was throwing needless expense on the suitors. A defendant in common law actions, is not by the present rules, obligéd to plead to the jurisdiction But the plea rule title " Trial and Judgment," 1. *post*, provides, that the plaintiff shall not be called upon to prove the jurisdiction, unless the defendant *gives notice of his intention to dispute it, at the time of filing his plea*; and if he needlessly puts the plaintiff to prove the jurisdiction, he will have to pay the costs of such proof, whatever may be the result of the action. That part of the former 26th plea rule which require the plaintiff, in all cases, to prove at the trial " *that the defendant is subject to the jurisdiction in* " *the manner stated in the plaint, and not otherwise, and that the defen-* " *dant shall be at liberty to controvert the same without pleading to the* " *jurisdiction or traversing the matter so stated*," is repealed, but a plaintiff is still required to prove the jurisdiction where a defendant gives notice of his intention to dispute it; and, in *exparte* cases, where a defendant has not appeared. But where the defendant has appeared, and not pleaded in due time, no proof of the jurisdiction is necessary, but the plaintiff is entitled to proceed to sign judgment by default. Since the time this rule came into operation to the present, (eighteen months) there has been only one instance of a plaintiff, in any defended action, being called upon to prove the jurisdiction.

make out the same, in the name and style of our Sovereign Lady the Queen, or her heirs and successors, having the attestation of the Chief Justice, or in the vacancy of that office, of the Puisne Judge acting as Chief Justice of this court; and that the same shall be signed by the officer who shall make out the same with his own name, and be subscribed with the name of the party or attorney applying for the same, and be marked with the day of the month and year, when the same issued from his office, and be by him when returned filed of record; and that every such writ, precept, rule, order, and mandatory process, before it shall be delivered to the Sheriff, or any other person, to be executed, be sealed with the seal of the court, and that every such writ, precept, rule, order, and mandatory process, shall be tested on the day on which the same shall issue, whether the same shall be in term or vacation, and shall be returnable in the manner particularly prescribed by any rule of this court, where any such apply, and in all other cases as the court or a Judge thereof shall order.

the attestation of Chief Justice, and signed by officer. &c.

To be sealed before delivered to be executed,

and tested on day issued.

See former Pl. R. 12.

21. That the seal of this court be not put to any writ, precept, rule, order, or mandatory process, unless the same be signed with the name of the proper officer to whom it shall belong to prepare and make out the same, and, unless the name of the party or attorney be subscribed thereunto, together with the day of the month and year, when the same shall issue from such office; and that the said seal be not put to any writ of habeas corpus, certiorari, prohibition, procedendo, or injunction, unless the same shall be signed with the name and in the proper hand-writing of a Judge of this court.

When and how the seal is to be affixed to writs, &c.

Habeas Corpus Certiorari, &c. and Injunction to be signed by a Judge.

See former Pl. R. 13.

22. That the Sheriff or his deputy do mark at the bottom of every writ, precept, rule, order, or process, which shall come to him, from any side of the court, the day of the month and the year, when the same was delivered to him, and shall indorse on such writ, precept, rule, order, or process, the true day of the execution thereof, and do mark at the bottom of every warrant, which he shall deliver, the name of the party or attorney which is subscribed to the writ, precept, rule, order, or

Sheriff to mark at the bottom of every writ, &c. the date of delivery and indorse thereon, date of execution, and on warrant, the name of the party or Attorney subscribed to writ, &c.

process, on which the same warrant shall be grounded, and in default of compliance with any of the directions of this rule, the Sheriff shall be liable, in a summary way, to make such compensation for any damages which may result from his neglect as the court or a Judge shall direct.

See former Pl. R 18 and R. 4. M.T. 3 W. IV.

Writs &c. to be duly executed, returned and filed.

23. That every writ, precept, rule, order, or process be duly executed, and the same duly returned by the Sheriff, or such person to whom the same shall be directed into the office out of which the same shall have issued, or in open court, to be filed by the officer of that department of the court, out of which the same shall have issued.

See former Pl. R. 19.

Translation in Vernacular language when to be served with writs, &c.

24. That the Sheriff, at the time of executing or serving any writ, precept, rule, order, notice, or process, which shall come to him from any side of the Court, shall at the time of such execution or service, if the same be executed or served on any defendant not being a European, likewise serve such defendant with a true translation in the vernacular language, of such writ, precept, rule, order, notice, or process, and on the execution of any warrant on a writ of sequestration against the houses, lands, or tenements of any defendant, shall (if such defendant be absent and be not a European,) cause to be stuck up in some conspicuous place on the premises, a true translation of such warrant in the vernacular language.

See former Pl. R. 80. Madras Plea Rule 10, Bombay Pl. Rule 6.

Zenanas not to be entered by the Sheriff, &c. except on Affidavit made to the satisfaction of a Judge of the necessity thereof, &c.

25. That no Sheriff, or officer of the Sheriff, or any other person executing the process of this Court, in any civil cause whatsoever, before or after judgment, do enter into the *zenana* or private apartments allotted to the women of any Hindoo or Mussulman, except affidavit be made, verifying to the satisfaction of the Chief Justice, or other Justice of this Court, that effects seizable by such process are secreted in such *zenana* or private apartments, or for other special cause, which; in the discretion of the said Chief, or other Justice, may make it necessary to the due execution of the laws, and the attainment of justice, and, unless such Chief, or other Justice shall make an order in writing for that purpose ; and it is further ordered, that no Sheriff's officer, or other person executing any warrant, or capias, or other process, before or after judgment, in any criminal suit whatsoever, do enter the

and on order granted, &c.

nor for execution of any warrant,

zenanæ or private apartments allotted to the women of any Hindoo or Mussulman, except affidavit be made, verifying, to the satisfaction of the Chief or other Justice of this Court, that such an enormous offence has been committed, which in the discretion of such Chief or other Justice, may make it necessary for the purpose aforesaid, and unless such Chief, or other Justice shall make an order for that purpose. (1.)

or criminal process, except on like affidavit and order.

See former Plea Rule 85.

26. It is ordered, that the Sheriff or any officer of the Sheriff, or other person, do not execute the process of this court in any civil cause whatsoever, against the person of any Hindoo, during the four days of the Hindoo festival, called the Doorga Poojah.

Hindoos exempted from arrest on civil process during the Doorga Poojah.

See former Pl. R. 98.

27. In all cases, in which any attachment, or other process, is sued out against any persons for non-payment of any sum of money, the sum, for the non-payment of which the process is so to issue, shall be endorsed thereon by the officer, out of whose office the process shall issue.

Sum to be indorsed on all process for non-payment of money.

See former Pl. R. 119, of 1829.

28. In all casses in which any capias ad respondendum, or other mesne process, or attachment, or other process of contempt, is to be sued out for the arrest of any person, who is resident ten miles beyond the limits of Calcutta, it shall be lawful for the party at whose suit the process is to be issued, to make application, supported by the certificate of the Sheriff, that the sum which will be required to cover the necessary and unavoidable expenses of making the arrest, and also the sum necessary for

How advance is to be authorised to be made to the Sheriff, to enable him to execute process of arrest ten miles from Calcutta.

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(1) A Commission was granted to examine female witnesses for the trial of an issue, whose rank and caste would not permit them to appear in public, subject to having their depositions suppressed at the issue, if it were shewn, that the caste and rank of the women would have permitted them to appear. Gourbullub *v.* Juggurnauth Persaud Mitter, 4th Term, 1823. Macnaghten and Buller, Js.—It was stated in this case, by the counsel for the defendant, that he had seen a woman of high rank brought into the Court in her palankeen, and examined through the purdah while in it.—[*C.*]

In the case of the King *v.* Abassee Khanum, August 8, 1837 —Before Sir B. H. Malkin—for Manslaughter and Murder on the Coroner's Inquest.—The prisoner, a woman of rank, was brought into Court in a covered tonjon, and arraigned without shewing her face; but, prior to her arraignment, her identity was ascertained by the oath of a credible witness, before whom she could appear without disgrace.

bringing the party to Calcutta after the arrest, may be by him advanced to the Sheriff, and indorsed separately on the writ; and if the Court, or Judge, to whom such application shall be made, shall be satisfied, of the reasonableness and necessity thereof, there shall be inserted in the order for the issuing of the writ, a specific direction, that the party may advance such sums certain, for the costs of the execution of such process, and that the Sheriff, upon receiving the same, shall certify on the back of the process, that they have been advanced to him, by permission of the Court, or of a Judge, as the case may be.

See former Pl. R. 120 of 1829.

Where arrest for non-payment of money 10 miles from Calcutta, when Sheriff may release.

29. In all cases, in which the Sheriff shall arrest any person ten miles beyond the limits of Calcutta, upon any attachment or other process, for non-payment of money, he may discharge the party from arrest upon receiving the sum or sums of money, which shall have been indorsed upon the writ, according to the foregoing rules.

See former Pl. R. 122, of 1829.

Also in cases of arrest on process of contempt for non appearance.

30. When the Sheriff shall arrest any person ten miles beyond the limits of Calcutta, upon any attachment, capias of contempt, or other process, for want of an appearance, it shall be lawful for him to discharge the party upon receiving from him any sum of money indorsed upon the writ, according to the preceding rules, and also a warrant duly signed by the party, and directed to any attorney of the Court, and attested by one credible witness, authorizing such attorney to enter an appearance for him. And every appearance so entered, under the authority of any such warrant, so given as aforesaid, shall be valid and effectual to all intents and purposes, provided it be entered within one month after the warrant shall have been given, but not otherwise.

Such appearance to be entered in one month.

See former Pl. R. 121, of 1829.

Sheriff to deliver all Writs, &c. unexecuted, to his successor, who shall execute same,

and also list of prisoners,

31. That every Sheriff do, at the expiration of his office, deliver to the succeeding Sheriff all such writs, precepts, rules, orders, and processes, as shall remain in his hands unexecuted, and that the succeeding Sheriff do execute and return the same in such manner as the former Sheriff was required; and that the Sheriff first mentioned do, at the same time, deliver to the succeeding Sheriff, a list of all the prisoners, together with the cause of their detention,

and that the succeeding Sheriff do keep in his custody such prisoners, until they be discharged by due course of law; and that, on or before the expiration of one year from the time of every Sheriff's going out of office, he do deliver to the Keeper of the Records of this Court, the Books of his office, being at liberty to have access to the same, at all reasonable times, without payment of any fee therefore.

and books of office, within a year of going out of office, to Record Keeper, with liberty to have access to same. See former Pl. R. 24.

32. That when a commission issues to examine witnesses living in Calcutta, or within twenty miles thereof, the same be made returnable in ten days; all commissions to examine witnesses residing beyond that distance and within five hundred miles thereof, be made returnable in four weeks, and all commissions beyond that distance, and within the presidency of Fort William, in six weeks, unless further time shall have been allowed by the Court, if sitting, or by a Judge thereof, in vacation.

Commissions to examine witnesses, when returnable.

See former Equity R. 45.

33. Wherever upon the hearing of any cause or other matter, it shall appear that the same cannot conveniently proceed, by reason of the neglect of an Attorney to attend personally, or by some proper person on his behalf, or to deliver some paper necessary for the use of the Court, and which, according to its rules, ought to have been delivered, such Attorney shall pay such costs to all or any of the parties, as the Court shall order.

When hearing delayed, by Attorney's neglect to attend or deliver papers to Court, he is to pay costs.

See Ld. Lyndhurst's ord. 36. Chancery Prop. 140 M. Eq. R. 54.

34. That the respective officers of this Court shall, at the request of any Attorney of the same Court, grant to such attorney, copies of all such pleadings, rules, orders, depositions, or affidavits, as may, under any order of the Court, or on any other account, be requisite to be produced at the hearing of any motion, or cause to be argued in this Court, or for any other purpose; and that such attorney shall not be under the necessity of taking copies of the whole proceedings in any cause, but only of such pleadings, rules, orders, depositions, or affidavits, as he may deem necessary; and it is ordered, that no original Pleading in Equity, be used or produced at hearings in Court, or before the Master; but the office copies thereof, signed by the proper officer, be made use of, in order that the aforesaid original pleadings may not be lost or defaced by being so used, or produced in Court or elsewhere.

Officers to grant Attorney copies of such pleadings, &c. as required, without their being obliged to take copies of the whole proceedings.

Original pleadings in Equity, not to be used, but office copies.

See former Pl. R. 90, Eq. R. 69.

Rules *nisi*, not brought on in Term, expire with it, unless revived, &c.

See M. Gen. R. 19.

35. Every rule or order to shew cause, if not brought on, or enlarged during the same term, shall be of no effect, unless revived in the next following term, by order of the Court, and upon being served anew; and no cause shall be shown in vacation, against a rule or order *nisi*, granted in Term time, unless specially ordered by the Court.

Service of Rules.

H. T. 2 W. IV. R. I. § 51.

36. It shall not be necessary to the regular service of a rule, that the original rule should be shewn, unless sight thereof be demanded, except in cases of Attachment.

Rules *nisi* for time, not to be granted without affidavit of notice.

37. No Rule nisi shall be granted, on the common law side of the Court, for further time to take some step in the cause, without an affidavit, that twenty-four hours' previous notice of such motion has been given.

Officers, to deliver lists termly, of all causes *pending*, specifying *stages*.

B. Gen. R. 4.

38. There shall be made up and delivered into Court, on the first day of every Term, by the proper officers, lists of all causes depending on the several sides of the Court, specifying the stage of each, with the names of the Attorneys and Proctors on each side. (1)

Sheriff to report execution of all writs.

See former Pl. R. 93

B. Gen. R. 4.

The Sheriff shall also, at the same time, deliver into Court a statement in writing, signed by himself, specifying what has been done in the execution of all Writs since the date of his last return.

Record, and exhibits, to be read and marked by Clerk of the Papers on all trials, except: &c. and detained until judgment.

When and to whom afterwards to be delivered by him.

See former Pl. R. 47.

39. That on every trial, except on the Crown Side, and on every hearing and enquiry of damages, the Clerk of the Papers shall read the record, and every exhibit produced in the cause, and shall sign the same with his name, and mark thereon the name of the party for whom they were adduced, and shall detain the same in his custody, until the Court shall have given judgment in the cause; and in every cause, when the Court shall by their judgment, on account of debt or damages, exclusive of costs, give a sum not exceeding *one thousand pagodas*, the said Clerk shall deliver back such exhibit to the party who produced the same.

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(1) See Rule 42, *post*.

40. That the Clerk of the Papers shall, in every case where the debt or damages shall be laid at one thousand pagodas or upwards, or at a less sum, if directed by the Court, reduce into writing in open Court, from the mouth of each witness, such matter as he shall depose, relative to the issue or issues to be tried; and such depositions shall be read to the witness, who shall immediately subscribe the same with his name or other mark, and the said Clerk shall sign his name to every deposition, and mark thereon the name of the party for whom the same was given, and shall detain the same in his custody, until the expiration of six months (1) from the day of the Court's pronouncing decree or judgment in the cause; and, if there be no appeal within the six months, shall deliver over the same to the Registrar or Prothonotary; and, if any appeal shall be allowed, shall detain the same in his custody, until the appeal shall be withdrawn or finally determined, and shall then deliver the same to the Registrar or Prothonotary, who shall file of record, and deliver over to the Keeper of the records and muniments of the Court, all the depositions in the cause, together with the record, at the time limited by the rule of this Court.

Depositions, to be taken down by Clerk of the Papers, where debt or damages laid at 1,000 pagodas, or at less, if directed by Court.

To be detained for six months.

If no appeal within that time, to be delivered to Registrar or Prothonotary.

If Appeal allowed, then until determined, then to Officer to be delivered to Record Keeper.

See former Pl. R. 47.

41. That if the Court shall, by their Judgment, on account of debt or damages, exclusive of costs, give a sum exceeding one thousand pagodas, then the said Clerk of the Papers shall mark on each exhibit, the day of the month and year on which the judgment was pronounced, and keep the same in his custody, until the expiration of six months from the day of pronouncing such judgment; and if there be no appeal within the said six months, then the said Clerk may and shall deliver the same to the party who produced the same at the trial; but the said Clerk, before the expiration of the said six months, or after, if any appeal shall be entered in the said cause, until such appeal shall be withdrawn or determined, shall not deliver up any such exhibit, unless by order of the Court or a Judge thereof, and unless two true and exact copies, signed by and with the name of the said Clerk, (one for

In appealable cases exhibits to be kept by the Clerk of the Papers for six months.

If no appeal, then to be delivered to the parties who produced same.

If appeal entered, no exhibit to be delivered, without order, nor unless two copies

(1) See Charter § 30.

taken by the Clerk of the Papers, at the expense of the applicant.

the use of the appellant, and the other to be filed with the depositions), shall be taken of the same, which copies shall be paid for to the said Clerk, by the party applying for the said exhibit; and if the party, who shall have applied for the same, shall be other than the appellant, the said Clerk shall not deliver either of the said copies so taken, or any other copy of such exhibit or exhibits unto the appellant, until the said appellant shall have deposited in the hands of such Clerk, to the use of the party having paid for such copies, such sum as the other party shall have paid to the said Clerk for such copies, which sum he shall repay to such last mentioned party on demand.

Appellant when to pay for such copies.

See former Pl. R. 47.

Officers of Court, on first day of Term, to report all judgments, decrees, &c.

42. It is ordered that the Prothonotary, and Equity, Ecclesiastical, and Admiralty Registrars, on the first day of every Term, do give in a report in writing to the Court of all the judgments had, and actions discontinued, and of all the decrees pronounced, and bills or libels dismissed in the preceding term, and of all causes wherein one year has elapsed without either party having proceeded therein, and that the said reports be read in Court, marked, and afterwards be delivered to the Keeper of the records and muniments, and at the periods when the records, &c. of any term ought to be delivered to the Keeper of the records and muniments according to the several rules in force in that behalf; and that the Keeper of the records and muniments do report in writing to the Court, whether the same be duly delivered by the Prothonotary and Registrars, according to their respective reports as aforementioned for that Term, and specify any difference or variance, if there should be any. (1)

See former Pl. R. 89.

Where Judge's certificate required, to be prepared by Officer.

Clerk to make no charge.

See former Pl. R. 114.

43. In all cases in which any certificate of any Judge is required, it shall be drawn and engrossed by the Registrar, Prothonotary, Clerk of the Papers, or other officer, whose papers are to be certified; and no Judge's Clerk shall demand or take any fee for drawing or ingrossing the same.

On appeal, a copy of the

44. That when any appeal shall be prosecuted against any judgment, decree, order or rule, given, pronounced,

(1) See Rule 38, *ante*.

or made in this Court, a true and exact copy of every standing rule of this Court, which shall in anywise have conduced to such judgment, decree, order, or rule, be transmitted to our Sovereign Lady the Queen, her heirs or successors, or her or their Privy Council, in like manner, and together with the copies of the evidence, proceedings, judgment, decree, order, or rule in the cause appealed.

Rule, conducing to decision, to accompany copies of proceedings.

See former Pl. R. 72.

45. That in every cause in which an Appeal shall be allowed, the Clerk of the Crown, Registrars, or Prothonotary, to whose office the said cause shall belong, do enter the word "*appeal*," in the margin of the record or proceedings in the said cause, opposite to the judgment, decree, order, or rule, which shall be appealed against.

The word "*Appeal*" to be marked in margin of Record, &c. of causes appealed.

See former Pl. R. 77.

46. The Court will generally dispose of its business in the following order, unless for some special reason it shall be thought expedient to vary therefrom.

Order of business.

In Term time, on Mondays and Thursdays, motions of all kinds in Law and Equity. If these should not occupy the day, then Common Law arguments or demurrers, special cases, and special verdicts, and the arguments, or pleas in Equity, demurrers, and exceptions, and caveats.

Term time.

What on Monday and Thursday.

In Term time, on the other days of the week, all motions of course, and motions relating to matters on the Common Law side, whereby the ordinary progress of a cause may be delayed. Then Common Law, Equity, and Ecclesiastical causes in their order, in the respective paper of causes. Those causes, which are called on and not fully heard on Wednessday, to be taken on Thursday; notwithstanding the above rule.

What on other days.

Causes partly heard on Wednesday to be taken on Thursday.

In the Sittings, all motions that can be heard out of Term, may be taken on Mondays and Thursdays, but not on the other days of the week, if the Court is sitting for the trial of Common Law causes. If the Court is sitting for the hearing of other cases, all motions may be taken at the sitting of the Court, and before the causes are called on for hearing.

Sittings.

What on Monday and Thursday, and not on other days.

Additional General Rule, passed 7th January, 1840.

47. Ordered, that no writ of *subpœna ad testificandum* be issued by the Ecclesiastical or Equity Registrar, the Prothonotary or Clerk of the Crown, to compel the attendance as a witness of any person resident, and, at the time of residing, at a greater distance from the Court than 10 miles, unless the Court or some Judge thereof order the same (1).

Subpœnas,

where witnesses at distance.

(1). The object of this rule is to prevent the unnecessary summoning of witnesses from great distances to attend the Court.

CROWN RULES.

CROWN RULES.

1. It is ordered, that a sessions of Oyer and Terminer and Gaol Delivery be held on the 15th day after the end of the *first* Term, except it falls on a Sunday, and then on the 16th day after that Term; and on the 20th day after the end of the *second*, *third* and *fourth* Terms, except it falls on a Sunday, then on the 21st day after the end of those Terms. The Clerk of the Crown is ordered to prepare the proper writs in pursuance of this rule. (1)

Sessions of Oyer and Terminer, when to be held.

Clerk of the Crown to prepare precepts.

See former Crown Rules 1. 36.

2. All writs, precepts, orders, or other mandatory process, concerning any criminal matter whatever, shall be made out and signed by the Clerk of the Crown, and marked with the day of the month and year when the same issued, and be returned into the office of the Clerk of the Crown, and there filed.

All process, orders, &c. to be issued by him, and returned to his office.

Madras Crown R. 1.

3. All indictments, depositions, and other proceedings relating to any criminal matter whatever, shall be filed with the Clerk of the Crown, who shall mark thereon the day and year of filing the same, and shall keep a book, in which he shall enter the same, and the day and year of filing the same.

Indictments &c be filed, and entered by him.

M. Cr. R. 2

4. The Clerk of the Crown shall prepare the necessary indictments in all charges of felony or misdemeanor, the depositions relating whereto have been returned into his office, except in any case where an indictment shall have been brought into his office, previous to the sessions. (2)

When indictments to be prepared by him.

M. Cr. R. 3.

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(1) Under the former Crown Rule 36, the Sessions were held on the fifteenth day after the end of each Term; this allowed no interval between the Sittings and the Sessions, unless a Sunday intervened, and consequently no time for the Judge to read the depositions or the Counsel to prepare indictments. The present Rule allows time for these purposes, except as to the Sessions after the first Term, the interval between the Sittings and the following Term, being little more than ten days, it is necessary the Sessions should follow immediately on the Sittings.

(2) And except, where the prosecutor intends to prosecute at his own expence, and takes out office copies of the depositions.

Clerk of the Crown to make entries of all process, orders, bail, fines, minutes, &c.,

5. The Clerk of the Crown shall enter in a proper and separate book, to be kept by him for that purpose, an account of all writs, precepts orders, or other mandatory process, and warrants issued, and of all bail allowed and taken on the Crown side of the Court, and what shall have been done thereupon, and all fines and recognizances set and forfeited at each sessions, and the minutes of the proceedings of the sessions; and shall make up, and safely keep, all records and muniments on the Crown side, classing them in a regular order, with references thereto, so that recourse may easily be had to them.

and keep records classed, &c.

M. Cr. R. 4.

To deliver into Court, on the first day of Term, extract roll of fines and account of sums received.

6. The Clerk of the Crown shall deliver into Court, on the first day of every Term next, after the holding of the sessions of Oyer and Terminer and Gaol Delivery, an extract roll of all fines, amercements, forfeitures, penalties, and sums of money which shall have been set, imposed upon, or forfeited by any person or persons, whomsoever, at such sessions; and shall, at the same time, also deliver into Court, an account of all sums of money which shall have come to his hands, during or since such sessions, in satisfaction of any fines, amercements, or penalties, and how the same have been disposed of.

See former Cr. R. 4.
M. Cr. R. 5.

Where money &c. deposited in lieu of bail, &c., he may charge commission or fees.

7. That in all cases where money, or securities for money, shall be deposited with the Clerk of the Crown, as security, in lieu of bail or recognizance, he be authorized to demand and take, at his own option, either a commission of one per cent. on such monies and securities so deposited, or such fees as would be payable in case the usual recognizances had been entered into.

See former Cr. R. 16.

Orders for transportation under sentence of Courts-Martial, to be duly entered.

When prisoner sentenced by Court, or Courts Martial, embarked, &c., Sheriff to return same to be filed.

8. The Clerk of the Crown shall enter, in a separate book, an account of all orders for the transportation of persons sentenced thereto by court-martial; and when any prisoner under sentence of transportation, either by this court or by court-martial, shall be removed from prison, and embarked on board of any ship, for the purpose of being transported, the Sheriff shall make a return thereof into the office of the Clerk of the Crown in writing, stating the name of the prisoner and the date of his embarkation, the names of the ship and captain, and her destination; and such return shall be filed by the Clerk of the Crown.

M. Cr. R. 6.

9. That all persons prosecuting writs of certiorari before the allowance thereof, do enter into a recognizance before the Chief Justice, or some one of the Justices of this Court, with two sufficient manucaptors, in a sum of two hundred Company's rupees, which recognizance shall be with condition, at the return of such writ, to appear and plead to the indictment or presentment in this Court, and at his own cost, to procure the issue joined upon the said indictment or presentment, or any plea, relating thereto, to be tried at the next sessions of Oyer and Terminer and Gaol Delivery, to be held in and for the town of Calcutta, and factory of Fort William in Bengal, next after such certiorari shall be returnable, unless the Court shall appoint any other time; and if any other time shall be appointed, then at such other time, and to give notice of such other time to the prosecutor; and also that the party or parties prosecuting such writs of certiorari, shall appear from day to day in this Court, and not depart until he or they shall be discharged by this Court, and such recognizances, writs of certioriari and indictments, shall be filed in the office of the Clerk of the Crown, and that the name of the prosecutor, if he be the party injured, and the name of such Clerk of the Crown shall be indorsed thereon, together with the day and year when such Clerk received the same; and if the person prosecuting such writ of certiorari, being defendant, shall not, before allowance thereof, procure such manucaptors to be found as aforesaid, the Justices of the Peace and their inferior Magistrates, may proceed to the trial of the indictment or cause, notwithstanding such certiorari, and if the defendant prosecuting such certiorari, be convicted, the Taxing Officer shall proceed to tax the prosecutor his costs, if he be the party aggrieved or injured, or be a civil officer, who shall prosecute on account of any fact that concerns him as officer to prosecute or present; and in case such defendant or defendants shall not, within ten days after demand, pay such costs, he, she, or they, shall be fined and imprisoned for such contempt, and the said recognizance shall not be discharged, until such costs shall be paid.

Mode of proceeding on writs of Certiorari.

Parties prosecuting, to enter into recognizance to appear and plead, &c.

On failure thereof, the Justices of the Peace, &c. may proceed.

On conviction, costs of prosecutor, &c. to be taxed by taxing officer.

On non-payment, contempt punishable by fine and imprisonment, &c.

See former Cr. R. 3.

10. It is ordered, that where any person or persons shall be prosecuted in this Court, for any misdemeanor, and

On Indictment found for

misdemeanor, prosecutor to enter into recognizance. No order for Bench warrant without certificate thereof.

See former Cr. R. 6.

a bill of indictment shall have been found, the prosecutor shall be required to enter into a recoginzance to prosecute the indictment found against such defendant or defendants, and that no order for a Bench warrant, or other process, be granted on the application of the prosecutor, without certificate of the Clerk of the Crown, of such recognizance having been entered into.

Persons in custody, or surrendering, &c. on indictment found may insist on trial during same sessions.

See former Cr. R. 7.

11. That where any indictment shall be found against any person or persons for a misdemeanor, such person or persons being then in custody, or such person or persons not being in custody, at the time of the indictment found, but surrendering himself, herself, or themselves, or being taken into custody, during the same sessions, shall have a right to be tried during the sessions in which such indictment shall have been found.

Prisoners on any process, to be considered in custody.

See former Cr. R. 8.

12. That every person, being a prisoner in the jail of Calcutta upon any procees, civil or criminal, shall be considered as being in custody, under the foregoing rule.

Persons in custody, or held to bail twenty days before sessions, to be tried at same sessions.

See former Cr. R. 9.

13. That where any indictment shall be found against any person or persons for a misdemeanor, such person or persons, having been committed to custody, or held to bail to appear to answer for such offence, twenty days at the least before the sessions, at which such indictment shall be found, he, she, or they shall plead or demur to such indictment, and trial shall proceed thereupon at the same sessions.

Persons not committed nor held to bail 20 days before sessions at which indictment found, but committed or held to bail or having received notice of indictment found 20 days before subsequent sessions, to plead, and trial to proceed at such sessions.

See former Cr. R 10.

14. That where any indictment shall be found against any person or persons for a misdemeanor, such person or persons not having been committed to custody or held to bail, to appear to answer for such offence, twenty days before the sessions, at which such indictment shall be found, but who shall have been committed to custody or held to bail, to appear to answer for such offence at some subsequent sessions, or shall have received notice of such indictment having been found, twenty days before such subsequent sessions, he, she, or they, shall plead or demur to such indictment, at such subsequent sessions, and trial shall proceed thereupon at such sessions.

15. That all such persons against whom any such indictment shall have been found at a prior sessions, not being in custody, nor held to bail, and intending to come in and take his, her, or their trial at any subsequent sessions, shall enter into a recognizance for that purpose, and shall give eight days' notice before the commencement of such subsequent sessions, of his, her, or their intention, to take his, her, or their trial at such subsequent sessions, and shall plead or demur to the indictment, and enter his, her, or their traverse or demurrer for trial, within three days after the commencement of such subsequent sessions. And all and every person or persons, who shall have been held to bail, to appear to answer to any indictment for a misdemeanor at any sessions, and who shall be desirous to take his trial at the same sessions, shall give eight days' notice before the commencement thereof, of his, her, or their intention to take his, her, or their trial at such sessions, in case any such indictment shall be found against them, and shall plead or demur to such indictment, and enter his or their traverse or demurrer for trial, within three days after such indictment shall have been so found.

All such persons, not being in custody nor held to bail, shall enter into recognizance and give eight days' notice before sessions, of intention to come in & try, and shall plead, &c. within three days after commencement of sessions.

Persons held to bail, to appear at any sessions, shall give eight days' notice before sessions, of intention to try, if indictment found,

and shall plead, &c. within 3 days after indictment found.

See former Cr. R. 11.

16. That where any person or persons, who shall be prosecuted for any misdemeanor, shall have traversed until a subsequent sessions, he, she, or they, shall give notice of trial, and enter his, her, or their traverse with the Clerk of the Crown, eight days before such subsequent sessions.

Traversers to give notice of trial, and enter traverse eight days before sessions.

See former Cr. R. 12.

17. That the prosecutor shall, in all cases, when he or she enters into a recognizance to prosecute, leave a memorandum in writing with the Clerk of the Crown, stating particularly the place at which, or the person upon whom, all notices necessary for the defendant or defendants to give are to be served, and that such place shall be in the town of Calcutta, or such person an inhabitant thereof and that all notices served by the defendant or defendants at such place, or upon such person, shall be deemed and taken to be good and valid service.

Prosecutor, entering into recognizance, to leave memorandum with Clerk of the Crown, stating place, where, or person on whom, notices are to be served in Calcutta.

See former Cr. R. 13.

18. That either party prosecuting or defending may, notwithstanding any of the rules aforesaid, apply to the Court, upon affidavit, to put off or postpone any such trial

Putting off trial,

by indictment, and that the Court may make such order therein as shall seem agreeable to justice; and that the Court may, upon sufficient cause shewn for that purpose, allow further time for such defendant or defendants to plead or demur to such indictment.

and allowing time to plead.

See former Cr. R. 14.

19. That the Clerk of the Crown do, in each sessions, make out a list of all the traverses entered for trial, in the order, and according to the priority of time in which the same shall have been entered in his book, and that the said list be entered upon a traverse board accordingly, and that the same be called on and tried in such order, unless the Court shall make other rule or order therein; and that the said traverses shall be called on as it may appear most convenient to the Court, without reference to the cases of felony, which may be for trial.

Clerk of Crown to make list of traverses entered for trial, to be tried in order unless, &c., and called on as convenient, without reference to felonies.

See former Cr. R. 15.

20. That every Habeas Corpus for the delivery of a prisoner may, if issued in vacation, or so near the end of the Term, that the same cannot be conveniently returned in Term, be made returnable before the Chief Justice, or any Judge of this Court, at such time and place as the Court, or a Judge thereof shall order.

When and where Habeas Corpus may be returnable before a Judge.

See former Pl. R. 12.

JURY RULES.

JURY RULES.

1. All resident householders within the town of Calcutta, who occupy any house or tenement, of the monthly value of thirty rupees, and all residents in Calcutta whose property or interest in lands, tenements, or goods would be worth the sum of three thousand rupees, after the payment of their just debts, are qualified and liable to serve on juries in the Supreme Court; except such persons as are hereinafter excepted. (1)

Qualification of Petit Jurymen.

Exception.

See former Cr. R. 17.

2. Those persons are incapable of serving on juries in the Supreme Court, who hold any office in, or under the said Court, or receive any pay or emolument for any employment under any officer thereof, or for executing any duties of police within the limits of Calcutta, or who are the subjects of any foreign state, or who are under the age of twenty-one years, or who are attainted of treason or felony, or who have been convicted of any fraudulent or infamous offence, without having obtained a free pardon, or who are under outlawry or excommunication, or who are lunatics or idiots, or are unable to understand the English language; and inasmuch as there are parts of the proceedings upon trials in the Supreme Court, which have not usually been translated by the interpreters, and which could not be translated without great difficulty and

Disqualification of Jurors.

See former Cr. R. 19.

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(1) Under the former Crown Rule, 17, "all men who on any former occasion had served on juries, in the Supreme Court, "were qualified and liable to serve on juries. This description, "having before served," it is presumed, was omitted as being no certain test of qualification in respect of property, at the time the party might be again summoned. In the former rule, resident householders, in order to be qualified, must have occupied a tenement of the *monthly value* of fifty rupess, or *annual value* of five hundred, or have property in lands or goods worth *five thousand rupees*, after the payment of their just debts. The qualification is now lowered, and it is now only necessary, the tenements shall be of the *monthly value* of thirty rupees, or the property of the *value* of three thousand rupees.

inconvenience, the Sheriff and the Clerk of the Crown are forbidden to insert in the list hereinafter mentioned, the names of any natives of whose competence to understand the English language, they have not experience or sure knowledge.

Persons exempted from serving on Juries.

3. These persons are exempted from the liability to serve on juries, namely, the Governor-General and all Peers, the members of Council, the Indian Law Commissioners, and the Secretaries and Deputy Secretaries of the Government, the Judges and officers of the Court of Sudder Adawlut, the members, and the principal secretaries to the Boards of Trade, Revenue, and Customs, and of the Sudder Special Commission, the Accountant General, and the sub-Treasurer for the time being, the Secretary to the Bank of Bengal, the Naval Store-keeper and Marine Paymaster, all officers of the Army, Navy, or Marine, of His Majesty or the East India Company; all persons employed in the Pilot Service of the East India Company; all Clergymen, and all such Dissenting Ministers as are actually attached to, or employed in, any public place of religious worship, and who follow no other secular employment but that of teaching; all Brahmins, Moollahs, and other Hindoos and Mahomedans, actually officiating as Priests in their respective religions; all Barristers at Law; all Physicians, Surgeons, and Apothecaries actually practising as such; all domestic servants, and all persons above sixty years of age, or who are afflicted with any great infirmities of body or mind. (1)

See former Cr. R. 20.

Exemptions from serving on any other than Special or Grand Juries.

4. All Covenanted Servants of the Honorable Company's Civil Service, all persons who, according to the usage of England are entitled to the style and addition of Esquire, or of any higher degree, or who shall be described in the lists hereinafter mentioned as Merchants or Bankers, all persons whose claims to the title of Rajah, or to have about them any insignia of equivalent rank have

(1) This rule differs from the former in exempting *all* instead of the *senior* members only of the Boards of Trade, Revenue and Customs from serving. The Indian Law Commissioners, and the Naval Store Keeper and Marine Paymaster, are also exempted from serving; in other respects, except striking out the words "Judges of the Provincial Court of Appeal and Circuit," the Rule is the same as before.

been formally acknowledged by the Government, or whose rank or superiority of caste, according to the usage of their tribe or religion, would prevent them from sitting on common juries, or whose property, or interest in lands, tenements, or goods, would be worth two hundred thousand rupees, after the payment of their just debts, shall be exempted from serving on any other than special or grand juries; provided always, that if any person, who is entitled to this exemption, shall be willing to waive the same, and to serve on common juries, an entry, to that effect, shall be made in a separate column, upon the lists and book hereinafter mentioned, and the party shall be deemed to be qualified, and liable to serve, both on special and on common juries.

Exemptions may be waived, and entry to be made.

See former Cr. R. 22.

5. In the months of January and February in every year, the Sheriff shall, by all lawful means, make inquiry throughout the limits of Calcutta, and shall prepare, to the best of his ability, knowledge, information, and belief, a full and accurate list, in alphabetical order, of all persons who are qualified and liable, as aforesaid, to serve on juries, and such list, according to the form of the schedule annexed to these rules, shall contain, in separate columns, opposite to each person's name, his proper style, addition, or calling, his place of residence, the country of his birth, his religious profession, and his qualification to serve on juries, and the ground of his privilege, if any, to serve on grand or special juries only; provided always, that in stating the religious profession of any person, it shall be sufficient to say Christian, Mahommedan, Hindoo, or the like, without specifying the particular church or sect of the party. (1)

Annual List of Jurors to be prepared by the Sheriff, and how, in January and February.

See former Cr. R. 23.

6. The Sheriff shall, on or before the first day of April, in each year, deliver (2) to the Clerk of the Crown, such list so made as aforesaid, signed by himself, and the Clerk of the Crown, shall thereupon, if need be, make further

The Sheriff's list, how and to whom, to be delivered in and corrected, in the month of April.

(1) This differs from the former rule, in directing this enquiry to be made by the Sheriff *only*, not by the Clerk of the Crown *and* the Sheriff.

(2) This differs from the former rule, in directing the Sheriff to deliver the list to the Clerk of the Crown, in the first instance, for revision; and the Clerk of the Crown is to deliver a corrected list.

inquiry, and make any necessary additions, corrections, or alterations thereto, which he shall think fit, and shall, on or before the fifteenth day of the same month of April, together with the Sheriff, attend the sitting Judge in chambers, with such list, and, after inspection and any necessary alteration of the said list, by such Judge, shall make out one fresh list, in alphabetical order, signed and attested by his hand and seal, as a true and perfect list of all persons qualified to serve as jurors in the Supreme Court, and shall cause the same to be published once in the *Government Gazette*, before the first day of May then next, and copies thereof to be affixed to some conspicuous part of the Court-house, and in such other place or places, as he shall think best adapted for the purposes of notoriety.

Clerk of the Crown to make out, sign, attest, and publish a fresh list, before 1st May.

See former Cr. R. 24.

7. The Clerk of the Crown, on every day in the month of May, on which any Judge shall sit in chambers, shall attend in the Court-house with the last mentioned list, and every person, whose name is improperly inserted or omitted, or who is wrongly or defectively described, may apply to the sitting Judge, who, either on the oath of the party himself, or on examination of witnesses, may order the list to be corrected by the Clerk of the Crown, and if any Hindoo or Mahommedan, included in the said list, shall be desirous of being excused from serving upon juries, he may, in like manner, appear in the said month of May, at the Court-house, and state to the sitting Judge such his objection, and his name shall thereupon be struck off such list; and in case of any alterations being made in the said list, the same shall be re-copied, and finally perfected and attested by the Clerk of the Crown, and once more published in the Government Gazette, *before* the *tenth* day of *June* then next. (1)

Appeals of Jurors, whose names are improperly inserted, or omitted, or wrongly described, when, where, and how to be heard.

If list altered, to be republished before 10th June.

See former Cr. R. 25.

8. The Clerk of the Crown shall place the said last mentioned list among the records of the Supreme Court, and shall cause the same to be fairly and truly copied in the same form in a book, and, on or before the *twentieth* (2) day of *June*, shall deliver the said book to the Sheriff, who, on quitting his office, shall deliver it to the succeeding

List to be kept with records, and copied in a book, to be delivered to Sheriff on or before 20th June.

(1) Former rule "*in the first fortnight of the month of June.*"
(2) Former rule "*tenth*"

Sheriff; and, excepting such alterations as at any time the Court or Judge may, on application, direct to be made in it, the said book so prepared in each year as aforesaid, shall, from the said twentieth (1) day of June, for twelve months next ensuing, be deemed and taken to be a true list of all persons qualified and liable to serve on juries in the Supreme Court, and the same persons shall be summoned to serve as Jurors, and no other; and the Supreme Court, by virtue of its authority, hereby requires of all Justices of the Peace, and Constables, and other officers, employed in the conservation of the peace, and of all persons having, in their keeping or possession, any public books of assessment or registry, that, for the purpose of enabling the Sheriff and Clerk of the Crown to form and perfect the afore-mentioned lists, they be aiding and assisting unto them.

To be deemed a true list of all persons liable, and none others to be summoned as Jurors.

Justices of the Peace, &c., and others, having public books of registry, to be aiding in forming such lists.

See former Cr. R. 26.

9. The Sheriff, out of the names contained in the book afore-mentioned, shall summon for each sessions, thirty-six of those who are qualified and liable to serve on grand juries, and seventy-two (2) of those who are qualified and liable to serve on petty juries; and every summons shall be served one week, at least, before the first day of the sessions, at which the party is summoned to attend.

Thirty - six Grand Jurors, and seventy-two petty Jurymen, to be summoned in each sessions.

See former Cr. R 27.

10. That the name of each juror, who shall be summoned as a grand juror, with his addition, shall be written on a distinct piece of parchment or card, being all, as nearly as may be, of equal size and shape, delivered by the Sheriff to the Clerk of the Crown, and shall, by the direction of such Clerk of the Crown, be put together in a box, and, at the first day of every sessions, the Clerk of the Crown shall, in open Court, draw out twenty-three of the said parchments or cards, one after another, and if any of those persons, whose names shall be so drawn, shall not appear, then such further number, until twenty-three persons shall be drawn, who shall appear, and the said twenty-three persons, so first drawn and appearing, their names being marked in the panel, and they being sworn, shall be the grand jury or inquest for that sessions.

Grand Jury.

Names of Jurors how to be drawn.

Twenty - three names first drawn, to be sworn, and form the Grand Jury

See former Cr. R. 2.

(1) Former rule "*tenth.*"
(2) Former rule "*sixty.*"

Petty Jury.

11. That the name of each person who shall be summoned as a petty juror, with his addition, shall be written on a distinct piece of parchment or card, being all, as nearly as may be, of equal size, and shall be delivered by the Sheriff to the Clerk of the Crown, and shall, by the direction of such Clerk of the Crown, be put together in a box, and when any prisoner or prisoners, person or persons, shall be arraigned, the Clerk of the Crown shall, in open Court, draw twelve of the said parchments or cards, one after another, and if any of the men, whose names shall be so drawn, shall not appear, or shall be challenged, and set aside, then such further number, until twelve men be drawn, who shall appear, and, after all just cause of challenge allowed, shall remain as fair and indifferent; and the said twelve men, so first drawn and appearing, and approved as indifferent, their names being marked in the panel, and they being sworn, shall be the jury to try such prisoner or prisoners, person or persons arraigned; and the names of the men, so drawn and sworn, shall be kept apart by themselves, until such jury shall have given in their verdict, and the same shall be recorded, or until such jury shall be discharged, and then the same names shall be returned to the box, there to be kept with the other names, remaining at that time undrawn, and so, *toties quoties*, as long as any prisoner or person remains to be arraigned and tried.

How to be drawn and impanelled.

See former Cr. R. 2.

Special Juries.

12. Upon motion made on behalf of the King, or of any prosecutor or defendant, after issue has been joined, upon any indictment or information for any misdemeanor, the Court, if the case shall appear to require it, will order a special jury to be struck before the Clerk of the Crown; and, for this purpose, the Sheriff, or under Sheriff, shall, within ten days after the delivery of the jurors' book for the current year, to either of them, take, from such book, the names of all men who shall be described therein, as liable to serve on grand or special juries only, and shall cause the names of all such persons to be fairly and truly copied out in alphabetical order, together with their respective places of abode, and additions, in a separate list to be subjoined to the Jurors' book, which list shall be

Sheriff to make out a separate list,

called "The Special Jurors' List," and shall prefix to every name in such list its proper number, beginning the numbers from the first name, and continuing them in a regular arithmetical series down to the last name; and shall cause the said several numbers to be written upon distinct pieces of parchment or card, being all, as nearly as may be, of equal size; and after all the said numbers shall have been so written, shall put the same together in a separate drawer or box, and shall there safely keep the same; and, whenever the Court shall order a special jury to be struck, the Clerk of the Crown shall appoint a time and place, for the nomination of such special jury; and a copy of the rule of Court shall be served on the under Sheriff, and also on the parties on whom it has been usual to serve the same in England; and the Clerk of the Crown, at the time and place appointed, being attended by the under Sheriff, or his agent, who are hereby respectively required to bring with them the jurors' book, and such special jurors' list, and all the numbers so written on distinct pieces of parchment or card, as aforesaid, in the presence of all the parties and of their Attornies, (if they respectively choose to attend, or if the said parties or their Attornies, all or any of them, do not attend, then in their absence,) put all the said numbers into a box, to be by him provided for that purpose, and after having shaken them together, shall draw out of the said box, forty-eight of the said numbers, one after another, and shall, as each number is drawn, refer to the corresponding number in the special jurors' list, and read aloud the name designated by such number; and if, at the time of so reading any name, either party or his Attorney shall object, that the man whose name shall have been so referred to, is in any manner incapacitated from serving on the said jury, and shall also then and there prove the same to the satisfaction of the Clerk of the Crown, such name shall be set aside, and the said officer shall, instead thereof, draw out of the said box, another number, and shall in like manner refer to the corresponding number in the said list, and read aloud the name designated thereby, which name may be in like manner set aside, and other numbers and names shall, in every such case, be resorted to, according to the mode of

to be called "The Special Jurors' List."

Manner of striking a Special Jury.

proceeding herein before described, for the purpose of supplying names in the places of those set aside, until the whole number of forty-eight names, not liable to be set aside, shall be completed; and if, in any case, it shall so happen, that the whole number of forty-eight names cannot be obtained from the special jurors' list, in such case, the Clerk of the Crown shall fairly and indifferently take, according to the mode of the nomination heretofore pursued in England, in nominating special juries, such a number of names from the general jurors' book, in addition to those already taken from the special jurors' list, as shall be required to make up the full number of forty-eight names, all and every of which forty-eight names shall, in such case, be equally deemed and taken to be those of special jurors, and the Clerk of the Crown shall afterwards make out, for each party, a list of the forty-eight names, together with their respective places of abode and additions, and, after having made out such list, shall return all the numbers so drawn out, together with all the numbers remaining undrawn, to the under Sheriff or his agent, to be, by such under Sheriff, safely and securely kept for future use; and all the subsequent proceedings for reducing the said list, and all other matters whatsoever, relating to special juries, shall be conducted in the same manner as in England; and the person or party who shall apply for a special jury, shall pay such Fees, for striking such jury, as shall be prescribed by the Court.

Proceedings for reducing the list, as in England.

Party applying, to pay fees for striking jury.

See former Cr. R. 28.

13. When it shall appear to the Court, or to any Judge thereof, in vacation, that it will be proper and necessary that some of the jurors who are to try the issue in any case, should have a view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues, in every such case, the Court, or any Judge thereof, in vacation, may order a rule to be drawn up, containing the terms usual in England, and also requiring, if such Court or Judge shall so think fit, the party applying for the view, to deposit, in the hands of the under Sheriff, a sum of money to be named in the rule, for payment of the expenses of the view, and commanding special writs of venire facias, distringas, or habeas corpus, to issue, by which the Sheriff, to whom

When a view by the Jury is necessary, mode of proceeding.

the said writs shall be directed, shall be commanded to have six or more of the jurors named in such writs, or in the panels thereto annexed, (who shall be mutually consented to by the parties, or if they cannot agree, shall be nominated by the Sheriff,) at the place in question, some convenient time before the trial, who, then and there, shall have the place in question shown to them, by two persons in the said writs named, to be appointed by the Court or Judge; and the Sheriff shall, by a special return upon the same, certify, that the view hath been had according to the command of the same, and shall specify the names of the viewers, and those men, who shall have had the view, or such of them as shall appear upon the jury, to try the issue, shall be first sworn, and so many only shall be added to the viewers, who shall appear, as shall, after all defaulters and challenges allowed, make up a full jury of twelve.

See former Cr. R. 29.

14. In all cases wherein the King is a party, notwithstanding it be alleged by them that sue for the King, that the jurors, or some of them, be not indifferent for the King, yet the inquests shall not remain untaken for that cause; but if they that sue for the King, will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of, according to the usage in England; and it shall be proceeded to the taking of the same inquisitions, as it shall be found, if the challenges be true or not, after the discretion of the Court; and no person, arraigned for murder or felony, shall be admitted to any peremptory challenge, above the number of twenty.

Challenges by those who sue for the King.

Peremptory challenge by prisoner in murder or felony, not to exceed 20.

See former Cr. R. 30.

15 At each sessions, the Clerk of the Crown shall make a minute of the names of those who shall serve at such sessions, and immediately after, shall give a copy of the same to the under Sheriff, and no juror, who has served, shall be summoned again within twelve months, unless for want of other jurors.

Jurymen to serve but once a year,

unless for want of Jurors.

See former Cr. R. 33.

16. All those who shall be lawfully summoned to serve on juries, and shall wilfully neglect to attend, shall be punished, as for a contempt; unless, upon motion made, it

Jurymen neglecting to

attend, punishable as for a contempt, unless, &c.

shall be shewn, to the satisfaction of the Court, that the name of the person ought to be erased from the Sheriff's book, or that such a material alteration should be made in the entry thereof in the said book, as would have excused the party from attending, in obedience to the summons.

See former Cr. R. 34.

Sheriff, and Clerk of the Crown, not answerable for errors When punishable as for contempt.

17. The Sheriff and Clerk of the Crown, shall not be answerable for any casual errors; but, for wilful omission, false insertion or description, or vexatious summoning, they shall be punishable as for a contempt.

See former Cr. R. 35.

Form of schedule referred to, in the foregoing rules.

1. Names of jurors, in alphabetical order.
2. Their style or calling
3. Their residence.
4. Their native country.
5. Their religion.
6. Their qualification to serve on juries.
7. Their exemption from service on common juries.
8. Whether, being qualified to serve on grand or special juries, they are willing to serve on common juries.

PLEA RULES.

PLEA RULES.

THE PLAINT.

1. That the Prothonotary do file of record, all plaints levied in this Court, and mark on the said plaints, the day and year in which he shall receive and file the same.

Prothonotary to file and mark all plaints.

See former Plea Rule 25.

2. Whereas plaints in actions upon bills of exchange, (1) promissory notes, and the counts usually called the common counts, occasion unnecessary expense to parties, by reason of their length, and the same may be drawn in a more concise form; Now, for the prevention of such expense, it is ordered, that if any plaint in assumpsit, hereafter filed, being for any of the demands mentioned in the schedule of forms and directions annexed to this rule, or demands of like nature, (2) shall exceed, in length, such of the said forms set forth or directed in the said schedule, as

If plaint in assumpsit, for demand mentioned in schedule of forms, exceed in length, the form applicable to the case, or in debt, for which assumpsit would lie, exceed;

(1) Mr. Chitty, in his practice of the law, 3 vol. 452, mentions the introduction of these rules in the following manner: "The first modern step towards "improvement, will be found in the Reg. Gen. of Trin. T. 1. W. 4, which were "promulgated by all the Judges under the assumption, that the 11. G. 4, "and 1 W. 4, c. 70. § 11, empowered them to make rules affecting *pleadings* as "well as *practice*."

The 11 G. 4, and 1 W. 4, c. 70. § 11, provide, "that in all cases relating to the "*practice* of any of the Courts of King's Bench, Common Pleas, or Exchequer, "in matters over which the said Courts have a common jurisdiction, it shall be "lawful for the Judges of the said Court, jointly, or any eight or more of them, "including the chiefs of each Court, to make general rules and orders for regu-"lating the *proceedings* of all the said Courts."

(2) The words "or demands of like nature," and the directions as to declarations on foreign bills, shew that these forms are merely given as illustrations, and that, in other cases of common debts, it is intended that the pleadings should be framed in a like concise manner. *The quantum meruit* and *valebant counts* should no longer be used, indeed the *indebitatus* count was always sufficient.—2 Saund. 121, c. *n*. 2.

no costs of excess allowed to plaintiff

Costs of defendant deducted from costs allowed plaintiff.

No such costs allowed between Attorney and Client.

If costs payable for excess, to be deducted from Attorney's bill

See former Pl. R. 20 of 1838 and G. R. H. T. 1 W. 4.

may be applicable to the case; or, if any plaint, in debt, to be so filed, for similar causes of action, and for which the action of assumpsit would lie, shall exceed such length, no costs of the excess shall be allowed to the plaintiff, if he succeed in the cause; and such costs of the excess as have been incurred by the defendant, shall be taxed and allowed to the defendant, and be deducted from the costs allowed to the plaintiff. And it is further ordered, that on the taxation of costs as between attorney and client, no costs shall be allowed to the attorney, in respect of any such excess of length; and in case any costs shall be payable by the plaintiff to the defendant, on account of such excess, the amount thereof shall be deducted from the amount of the attorney's bill.

SCHEDULE OF FORMS AND DIRECTIONS.

Count on a promissory note, against the maker, by payee or indorsee, as the case may be.

For that whereas the defendant, on the —— day of —— in the year of our Lord ——, at Calcutta, (or, *at, &c.*) made his promissory note in writing, and delivered the same to the plaintiff, and thereby promised to pay the plaintiff, Co.'s Rs. —,— days [*weeks, or months,*] after the date thereof, [*or, as the fact may be,*] which period has now elapsed; [or, *if the note be payable to A. B.*, and then and there delivered the same to A. B., and thereby promised to pay to the said A. B. or order, Co.'s Rs. —,— days [*weeks, or months,*] after the date thereof, [*or, as the fact may be,*] which period has now elapsed; and the said A. B. then and there indorsed the same to the plaintiff, whereof the defendant then and there had notice, and then and there, in consideration of the premises, promised to pay the amount of the said note to the plaintiff, according to the tenor and effect thereof.]

Count on a promissory note, against payee by indorsee.

Whereas one C. D., on the —— day of ——, in the year of our Lord ——, at Calcutta, (or, *at, &c.*) made his promissory note in writing, and thereby promised to pay the defendant, or order, Co.'s Rs. —,— days [*weeks, or months,*] after the date thereof, [*or, as the fact may be,*]

which period has now elapsed; and the defendant then and there indorsed the same to the plaintiff, [or, *and the defendant then and there indorsed the same to X. Y. and the said X. Y. then and there indorsed the same to the plaintiff;*] and the said C. D. did not pay the amount thereof, although the same was there presented to him, on the day when it became due: of all which the defendant then and there had due notice.

Count on a promissory note, against indorser by indorsee.

Whereas one C. D., on ———, at Calcutta, [or, *at, &c.*] made his promissory note in writing, and thereby promised to pay to X. Y. or order, Co.'s Rs. —,— days [*weeks, or months,*] after the date thereof, [*or, as the fact may be,*] which period has now elapsed, and then and there delivered the said note to X. Y., and the said X. Y. then and there indorsed the same to the defendant, and the defendant then and there indorsed the same to the plaintiff, [or, *and the defendant then and there indorsed the same to Q. R., and the said Q. R. then and there indorsed the same to the plaintiff;*] and the said C. D. did not pay the amount thereof, although the same was there presented to him on the day when it became due, of all which the defendant then and there had due notice.

Count on an inland bill of exchange against the acceptor by the drawer, being also payee.

Whereas the plaintiff, on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff Co.'s Rs. —,— days [*weeks, or months,*] after the date [*or sight*] thereof, which period has now elapsed, and the defendant then and there accepted the said bill, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of his said acceptance thereof, but did not pay the same when due.

Count on an inland bill of exchange, against the acceptor by the drawer, not being the payee.

Whereas the plaintiff, on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to O. P., or order, Co.'s Rs. —,—

days [*weeks, or months*] after the date [*or sight*] thereof, which period has now elapsed; and then and there delivered the same to the said O. P.; and the said defendant then and there accepted the same, and promised the plaintiff to pay the same accordingto the tenor and effect thereof, and of his acceptance thereof; yet he did not pay the amount thereof, although the said bill was there presented to him, on the day when it became due; and thereupon the same was then and there returned to the plaintiff: of all which the defendant then and there had notice.

Count on an inland bill of exchange, against the acceptor by indorsee.

Whereas one E. F., on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the said E. F., [or *to H. G.*] or order Co.'s Rs. —,— days [*weeks, or months*] after sight (or *date*] thereof, which period is now elapsed; and the defendant then and there accepted the said bill, and the said E. F. [or *the said H. G.*] then and there indorsed the same to the plaintiff, [or, *and the said E. F., or the said H. G. then and there indorsed the same to K. J., and the said K. J. then and there indorsed the same to the plaintiff*]; of all which the defendant then and there had due notice, and then and there promised the plaintiff to pay the amount thereof, according to the tenor and effect thereof, and of his acceptance thereof.

Count on an inland bill of exchange against the acceptor by the payee.

Whereas one E. F. on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to the defendant, and thereby required the defendant to pay to the plaintiff Co.'s Rs. —,— days [*weeks, or months,*] after the sight [or *date*] thereof, which period has now elapsed; and the defendant then and there accepted the same, and promised the plaintiff to pay the same, according to the tenor and effect thereof, and of his acceptance thereof.

Count on an inland bill of

Whereas the defendant, on ———, at Calcutta, (or, at, &c.) made his bill of exchange in writing, and

directed the same to J. K., and thereby required the said J. K. to pay to the plaintiff Co.'s Rs. —,— days [*weeks, or months,*] after the sight [or *date*] thereof, and then and there delivered the same to the said plainliff: and the same was then and there presented to the said J. K. for acceptance, and the said J. K. then and there refused to accept the same: of all which the defendant then and there had due notice.

exchange, against the drawer by payee on non-acceptance

Whereas the defendant, on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to J. K., and thereby required the said J. K. to pay to the order of the said defendant, Co.'s Rs.—,— days [*weeks, or months*] after the sight [or *date*) thereof, and the said defendant then and there indorsed the same to the plaintiff, [or, *and the said defendant then and there indorsed the same to L. M., and the said L. M. then and there indorsed the same to the plaintiff;*] and the same was then and there presented to the said J. K. for acceptance, and the said J. K. then and there refused to accept the same: of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against drawer by indorsee, on non-acceptance.

Whereas one N. O. on ———, at Calcutta, [or, *at, &c.*] made his bill of exchange in writing, and directed the same to P. Q, and thereby required the said P. Q. to pay to his order, Co.'s Rs. —,— days [*weeks, or months*] after the date [or *sight*] thereof, and the said N. O. then and there indorsed the said bill to the defendant, [or, *to R. S., and the said R. S. then and there indorsed the same to the defendant,*] and the defendant then and there indorsed the same to the plaintiff, and the same was then and there presented to the said P. Q. for acceptance, and the said P. Q. then and there refused to accept the same: of all which the defendant then and there had due notice.

Count on an inland bill of exchange, against indorser by indorsee, on non-acceptance.

Whereas one N. O., on ———, at Calcutta, [or *at, &c.*] made his bill of exchange in writing, and directed the same to P. Q., and thereby required the said P. Q. to

Count on an inland bill of exchange, against

payee by indorsee, on non-acceptance.

pay to the defendant, or order, Co.'s Rs. —,— days [*weeks, or months*] after the sight [or *date*] thereof, and then and there delivered the same to the defendant, and the defendent then and there indorsed the said bill to the plaintiff; [or, *to R. S., and the said R. S. then and there indorsed the same to the plaintiff;*] and the same was then and there presented to the said P. Q. for acceptance, and the said P. Q. then and there refused to accept the same: of all which the defendant then and there had due notice.

Directions for plaints on bills or notes, where action brought after time for payment expired.

1st. On bills payable after date.

If the plaint be against any party to the bill, except the drawee or acceptor, and the bill be payable at any time after date, and the action not brought till the time is expired, it will be necessary to insert, as in plaints on promissory notes, immediately after the words denoting the time appointed for payment, the following words, *viz.* "*which period has now elapsed;*" and instead of averring that the bill was presented to the drawee for *acceptance*, and that he refused to *accept* the same, to allege "*that the drawee* [naming him] *did not pay the said bill, although the same was there presented to him, on the day when it became due.*"

2dly. On bills payable after sight.

And if the plaint be against any party, except the drawee or acceptor, and the bill be payable at any time after sight, it will be necessary to insert, after the words denoting the time appointed for payment, the following words, *viz.* "*and the said drawee* [naming him] then *and there saw and accepted the same, and the said period has now elapsed;*" and instead of alleging that the bill was presented for acceptance, and refused, to allege, "*that the drawee* [naming him] *did not pay the said bill, although the same was presented to him on the day when it became due.*"

Where payable at sight.

If a note or bill be payable *at sight*, the form of the plaint must be varied, so as to suit the case, which may be easily done.

On foreign bills.

Plaints on foreign bills may be drawn according to the principle of these forms, with the necessary variations.

COMMON COUNTS.

Whereas the defendant on———, at Calcutta, [or, *at &c.*] was indebted to the plaintiff, in Co. Rs. ———, for the price and value of goods then and there bargained and sold, [or, *sold and delivered,*] by the plaintiff to the defendant, at his request. Goods. See G. R. T. T. I. W. 4.

And in Co.'s Rs. ———, for the price and value of work then and there done, and materials for the same, provided by the plaintiff for the defendant at his request. Work.

And in Co.'s Rs. ———, for money then and there lent by the plaintiff to the defendant, at his request. Money lent.

And in Co.'s Rs. ———, for money then and there paid by the plaintiff for the use of the defendant, at his request. Money paid.

And in Co.'s Rs.———, for money then and there received by the defendant, for the use of the plaintiff. Money received

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And in Co.'s Rs.———, for money found to be due from the defendant to the plaintiff, on an account then and there stated between them. Account stated.

And whereas the defendant afterwards, on &c. in consideration of the premises respectively, then and there promised to pay the said several monies respectively to the plaintiff, on request; yet he hath disregarded his promises, and hath not paid any of the said monies, or any part thereof;—to the plaintiff's damage of Co.'s Rs. ———, and thereupon he brings suit, &c. General conclusion.

If the plaint contains one or more counts against the maker of a note, or acceptor of a bill of exchange, it will be proper to place them first in the plaint, and then in the Directions as to the general conclusion.

general conclusion, to say, promised to pay the said *last mentioned several monies respectively*. (1)

Particulars of demand, to be filed with plaint.

3. It is ordered, that with every plaint filed, containing counts in *indebitatus assumpsit*, or debt on simple contract, the plaintiff shall file full particulars of his demand under those counts, where such particulars can be comprised within three folios; and where the same cannot be comprised within three folios, he shall file such statement of the nature of his claim, and the amount of the sum or balance, which he claims to be due, as may be comprised within that number of folios; And, to secure the filing of particulars in all such cases, it is further ordered, that if any plaint shall be filed without such particulars, or such statement as aforesaid, and a Judge shall afterwards order a delivery of particulars, the plaintiff shall not be allowed any costs in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver. And the particulars of the demand shall be annexed by the Prothonotary to every record, before the cause is called on for trial. (2)

If not, and delivery ordered, plaintiff not to be allowed costs.

Particulars to be annexed to record before cause called on. See former Pl. R. 21, of 1831, and G R. T. T 1 W. 4.

Plaints and pleadings how to be entitled.

4. The plaint, and every other pleading, shall be entitled of the day of the month and year when the same was pleaded, and shall bear no other time or date; and every plaint, and other pleading, shall also be entered on the record, under the date when the same respectively took place, and without reference to any other time or date,

See G. R H. T. 4 W. 4, pursuant to 3 & 4 W 4, c 42

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(1) The defendant demurred specially, assigning for cause, that the *promise* in the declaration was not laid according to the form prescribed by this rule. Held, that this rule as to the averment of the *promise*, where there is a count against the maker of a note or the acceptor of a bill, and also the common counts, applies to the latter only. Wainwright *v.* Johnson, 5 Dowl. 317.

(2) If to a declaration in the ordinary form in *indebitatus assumpsit*, with particulars containing various causes of action, the defendant pleads payment into Court, he is not precluded by his plea from contesting his liability in respect of any item beyond the amount paid into Court, as particulars are not to be considered as part of the declaration.—Booth *v.* Howard, 5 Dowl. 438.

In *debt*, where there is no plea of payment, it was held, that the admission in the particulars of a sum paid, could not be used in answer to the plaintiff's action. Ernest *v.* Brown, 5 Dowl. 637. But see B. Parke's observations on this

unless otherwise specially ordered by the Court or a Judge. (1)

5. No entry of continuances by way of imparlance, *curia advisare vult, vicecomes non misit breve,* or otherwise, shall be made upon any record or roll whatever, or in the pleadings. (2)

No entry of continuances on record.

See G. R. H. T. 4 W. 4.

Provided, that such regulation shall not alter or affect any existing rules of practice, as to the times of proceeding in the cause.

Not to affect the times of proceeding.

Provided also, that in all cases in which a plea *puis darrein continuance* is now by law pleadable, the same defence may be pleaded, with an allegation that the matter arose after the last pleading.

Plea puis darrein continuance.

Provided also, that no such plea shall be allowed, unless accompanied by an affidavit, that the matter thereof arose within eight days next before the pleading of such plea, or unless the Court or a Judge shall otherwise order.

Affidavit to verify.

Or leave obtained.

6. The following mode of pleading is prescribed by the Court, in order that the several disputed facts material to

Mode of pleading in future.

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case in Kenyon *v.* Wakes, 6 Dowl. 105; and also Coates *v.* Stevens. 3 Dowl. 784, also Shirley *v.* Jacobs, 2 Bing. N. S. 88, Nicholl *v.* Williams, 2 M. & W. 758. In the Courts at Westminster, this question is now set at rest, it is provided by a rule passed on the 25th May, 1838, by all the Judges, "that in any case in which the plaintiff (in order to avoid the expence of a plea of payment,) shall have given credit in the particulars of his demand for any sum or sums of money there admitted to have been paid to the plaintiff, it shall not be necessary for the defendant to plead the payment of such sum or sums of money." Where the particulars of the plaintiff's demand exceed three folios, the Court will order the plaintiff to deliver to the defendant full particulars of his demand, the defendant paying the costs of the particulars, and, if necessary, taking short notice of trial. James *v.* Child, 1 Dowl. 310. 2 C. & J. 252. The Court will not compel a plaintiff to give particulars in an action on a bill of exchange, the declaration containing only one count, unless under particular circumstances. Brooks *v.* Farlar, 5 Dowl 361. 3 Bing. N. S. 291. S. C.. See also Stannard *v.* Ulhthorne, 5 Dowl. 370. 3 Bing N. S. 326. S. C. See Fleming *v.* Crisp, 5 Dowl 454, as to error in particulars.

(1) If the title be omitted or misstated, it is not a ground even for a special demurrer. Neal *v.* Richardson, 2 Dowl. 89.

(2) Imparlances are altogether abolished. See Wigley *v.* Tomlins, 3 Dowl. 7 overruling. Frean *v.* Chaplin, 2 Dowl. 523. Also see Nurse *v.* Geeting, 3 Dowl. 157.

the merits of the case may, before the trial, be brought to the notice of the respective parties more distinctly than heretofore.

See G. R. H. T. 4 W. 4.

Several counts and pleas not allowed, unless distinct matter intended to be established.

Several counts shall not be allowed, unless a distinct subject matter of complaint is intended to be established in respect of each; nor shall several pleas, or avowries, or recognizances, be allowed, unless a distinct ground of answer or defence is intended to be established in respect of each.

See G. R. H. T. 4, W. 4.

Counts on same matter when not allowed.

Therefore, counts founded on one and the same principal matter of complaint, but varied in statement, description or circumstance only, are not to be allowed. (1)

Examples.

Contracts with and without a condition.

Ex. gr. counts, founded upon the same contract, described in one, as a contract without a condition, and in another, as a contract with a condition, are not to be allowed; for they are founded on the same subject-matter of complaint, and are only variations in the statement of one and the same contract.

Non-delivery, &c. of bill in payment, and for price of goods.

So counts, for not giving or delivering, or accepting a bill of exchange in payment, according to the contract of sale, for goods sold and delivered, and for the price of the same goods to be paid in money, are not to be allowed.

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(1) The introduction of several counts on the same transaction, probably arose from an anxiety, on the part of the pleader, to avoid all risk of variance. In ancient pleadings, more than one count was not inserted, unless there were really *several distinct claims*, though it is true, that formerly the subjects of litigation were but few, especially in assumpsit and case, and most of the forms of declaration were to be found in the *Registrum Brevium*. The strict rules which the Courts adopted on the subject of variance, made it frequently necessary for a cautious pleader to insert more than one count; but the large power of amendment which the Judges now exercise, makes the introduction of several counts upon the same transaction, no longer necessary in practice, (see rule 9, *post* 48, as to amendments.) Where several counts are introduced, which do not really relate to distinct claims; it is, in fact, an evasion of the rule against duplicity of pleading, and though it has long passed by continual sufferance into regular practice, yet, whether the subject of several counts be *really* distinct, or identical, they must always *purport* to be founded on distinct causes of action, and not to refer to the same matter. This is evidently rendered necessary by the rule against duplicity. See Stephen on pleading, p. 288 The new rules of pleading do not extend to real actions; Miller *v.* Miller, 3 Dowl. 408.

So counts for not accepting and paying for goods sold, and for the price of the same goods, as goods bargained and sold, are not to be allowed.

Not accepting and paying for goods, and for price as bargained

But counts upon a bill of exchange or promissory note, and for the consideration of the bill or note in goods, money, or otherwise, are to be considered as founded on distinct subject matters of complaint, for the debt and the security are different contracts; and such counts are to be allowed.

But counts on bill or note, and for consideration, allowed.

Two counts upon the same policy of insurance, are not to be allowed.

Not on same policy.

But a count upon a policy of insurance, and a count for money had and received, to recover back the premium upon a contract implied by law, are to be allowed.

But on policy, and for premium allowed.

Two counts on the same charter-party are not to be allowed.

Not on same charter-party.

But a count for freight upon a charter-party, and for freight *pro ratâ itineris*, upon a contract implied by law, are to be allowed.

When for freight.

Counts upon a demise, and for use and occupation of the same land, for the same time, are not to be allowed.

Not on demise, and use and occupation.

In actions of tort for mis-feazance, several counts for the same injury, varying the description of it, are not to be allowed.

Nor in tort for mis feazance, when,

In the like actions for non feazance, several counts, founded on various statements of the same duty, are not to be allowed.

Nor for non feazance, when,

Several counts in trespass, for acts committed at the same time and place, are not to be allowed.

Nor in trespass, when,

Where several debts are alleged in *indebitatus assumpsit*, to be due in respect of several matters,—*ex. gr.* for wages, work, and labour, as a hired servant, work and labour generally, goods sold and delivered, goods bargained and sold, money lent, money paid, money had and received, and the like, the statement of each debt is to be considered as amounting to a several count, within the

Indebitatus assumpsit for several causes of action,

When not allowed in.

See G. R. H. T. 4 G. 4. See also G. R. T. T. 1 W. 4, and *ante* 39.

meaning of the rule, which forbids the use of several counts, though one promise to pay only is alleged in consideration of all the debts.

Account stated, may be joined with another for a money demand.

Provided, that a count for money due on an account stated, may be joined with any other count (1) for a money demand, though it may not be intended to establish a distinct subject matter of complaint in respect of each of such counts.

Several breaches may be assigned in the same count.

The rule which forbids the use of several counts, is not to be considered as precluding the plaintiff from alleging more breaches than one of the same contract in the same count.

Pleas founded on same matter, when not allowed.

Pleas, avowries, and cognizances, founded on one and the same principal matter, but varied in statement, description, or circumstances only, (and pleas in bar in replevin are within the rule,) are not to be allowed. (2)

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(1) As to adding this count to declarations on bills or notes, see Petersdorff's Precedents 67, *n.* 5. If there is a special plea to the count on a bill or note and the general issue to the account stated, and plaintiff recovers on the first, and defendent obtains a verdict on the second, the latter will be entitled to the costs of the plea applicable to the issue.

(2) A defendant might always give distinct answers to different claims or complaints, on the part of the plaintiff. To several counts, or to distinct parts of the same count, he might plead several pleas, *viz.*, one to each, but he could not, formerly, give several distinct answers to the *same* claim or complaint. The defendant, therefore, was obliged to elect between his defences where he had more than one.

The statute 4 Anne, c. 16, § 4, provided, that, with leave of the Court, a defendant might plead as many several matters as he might think necessary for his defence. It was probably only intended by this statute, to allow the defendant to plead several matters to the *same* subject of demand, or complaint, where the several pleas really contained *several* grounds, of defence, but, in practice, it was carried much further, as the plaintiff, in several counts, found it convenient to vary the mode of stating the *same* subject of claim, so, for similar reasons the defendant was led, under *color* of pleading distinct matter of defence, to state *variously*, in various pleas, the *same defence*. The object of these new rules is to restrain the apparent abuse of the indulgence given by the statute and restore the more ancient mode of pleading; but pleas that are inconsistent with each other, may be allowed. Thus, a defendant in an action for work and labour, and for money paid to his use, applied to be allowed to plead, first, the general issue, and secondly, that the demand, for work and labour done, arose out of an illegal wager as to the price of tallow; the Court allowed the pleas, and Mr. Justice Bosanquet observed, that the word *inconsistent* was studiously

Ex. gr. pleas of *solvit ad diem,* and of *solvit post diem,* are both pleas of payment, varied in the circumstance of time only, and are not to be allowed.

Examples Solvit ad. and sol. post, not allowed.

But pleas of payment, and of accord and satisfaction, or of release, are distinct, and are to be allowed.

But payment with accord or release, allowed.

Pleas of an agreement to accept the security of A. B. in discharge of the plaintiff's demand, and of an agreement to accept the security of C. D. for the like purpose, are also distinct, and to be allowed.

Also agreements to accept security of different parties.

But pleas of an agreement to accept the security of a third person, in discharge of the plaintiff's demand, and of the same agreement, describing it to be an agreement to forbear for a time, in consideration of the same security, are not distinct, for they are only variations in the statement of one and the same agreement, whether more or less extensive in consideration of the same security, and not to be allowed.

But not of a third person, and same agreement to forbear, in consideration of same security.

In trespass *quare clausum fregit,* pleas of soil and freehold of the defendant in the *locus in quo,* and of the defendant's right to an easement there, pleas of right of way, of common of pasture, of common of turbary, and of common of estovers, are distinct, and are to be allowed.

In trespass, qu. cl. fre. Liber. ten. easement, right of way, &c. allowed.

But pleas of right of common at all times of the year, and of such right at particular times, or in a qualified manner, are not to be allowed.

Right of common, when not.

So pleas of right of way over the *locus in quo,* varying the *termini,* or the purposes, are not to be allowed.

Right of way, when not.

Avowries for distress for rent, and for distress for damage feasant, are to be allowed.

Distress for rent, &c. when allowed.

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avoided in framing the plea rules, because it was felt, that two or more pleas might be inconsistent, and yet sustain substantially different defences. The object had in view being to prevent the *same defence* being pleaded in different forms Triebner *v.* Duerr, 1. Scott. 102. S C. 3 Dowl. 133. and 1 Bing. N. S 266. See also Leuckhart. *v.* Cooper, 1 Bing N. S 509. Thompson *v.* Bradbury, 1. Bing N. S. 326. Scott *v.* Thomas, 6 Car. & P. 611. Hart *v.* Bell. 1 Hodges 6. Atkinson *v.* Duckham, 4 Dowl. 327, and see Tidd new Prac. 218. 406.

When not.

But avowries for distress for rent, varying the amount of rent reserved, or the times at which the rent is payable, are not to be allowed.

The principles of the rules not to be restricted by examples given.

The examples in this and other places specified, are given as some instances only of the application of the rules to which they relate; but the principles contained in the rules are not to be considered as restricted by the examples specified. (1)

Where more than one count, plea, &c. has been used, in apparent violation of preceding rules, a Judge may order same to be struck out, with costs,

7. Where more than one count, plea, avowry, or cognizance shall have been used, in apparent violation of the preceding rule, the opposite party shall be at liberty to apply to a Judge, suggesting that two or more of the counts, pleas, avowries, or cognizances are founded on the same subject-matter of complaint, or ground of answer or defence, for an order that all the counts, pleas, avowries, or cognizances, introduced in violation of the rule, be struck out at the *cost* of the party pleading, whereupon the Judge shall order accordingly, unless he shall be satisfied, upon the cause shewn, that *some distinct subject matter* of complaint, is *bonâ fide* intended to be established in respect of each of such counts, or some distinct ground of answer or defence, in respect of each of such pleas, avowries, or cognizances; in which case, he shall indorse upon the summons or state in his order, as the case may be, that he is so satisfied; and shall also specify the counts, pleas, avowries, or cognizances mentioned in such application, which shall be allowed. (2)

Unless satisfied of distinct matter intended to be established.

G. R. H. T. 4 W 4.

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(1) The substance of this rule and the rules 7 and 8 which follow, as to plaints, is, that the cause of action must be stated in *only one count*, and cannot be varied in *several*; and if a violation of this principle be persisted in to trial, the party may be punished, not only by payment of costs on the count found for the defendant, but also with loss of the costs of the issue *relative to the same matter*, although found in his favour; but *several breaches* of the same contract may still be assigned. In general the non-observance of those rules, relating to the forms, of plaints cannot be taken advantage of by *demurrer*, as a *defect* in *pleading*, but must, if at all, be objected to by an application to a Judge to set aside the proceedings for irregularity. In trespass *quare clausum fregit*, however, there must be a statement of the abuttals, or the defendant may demur specially, see 3 Chit. Prac. 461, 479, 486, and also *2d Rep. Com. Law Com.* 85.

(2) At *common law*, and independently of any rule, each superior Court of law has jurisdiction to strike out *unnecessary matter*. There are also several

8. Upon the trial, where there is more than one count, plea, avowry, or cognizance upon the record, and the party pleading *fails to establish a distinct subject matter of complaint* in respect of each count, or some distinct ground of answer or defence in respect of each plea, avowry, or cognizance, a verdict and judgment shall pass against him upon each count, plea, avowry, or cognizance, which he shall have so failed to establish, and he shall be liable to the other party for all the *costs* occasioned by such count, plea, avowry, or cognizance, including those of the evidence, as well as those of the pleading. (1) And, further, in

Where more than one count, plea, &c, and at trial party pleading fails to establish distinct matter of complaint or defence.

Judgment against party pleading will costs of evidence, as well as pleading.

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rules of Court as far back as 1654, prohibiting repetition and the insertion of useless matter in declarations. See cases collected in notes 3 Chit. Prac. 473, Tidd Prac. 9th ed. 616 to 619, and Tidd new Prac. 219. As to striking out counts, see Jenkins *v.* Treloar, 4 Dowl. 690 Applications as to striking out counts ought to be made to a Judge in Chambers, in the first instance Ward *v* Graystock, 4 Dowl. 717. Yet where a motion for a like purpose involves points of law, or the construction of statutes, it is rightly brought before the Court. See Doe d. Parish of Llandesilio *v.* Roe, 4 Dowl. 222. No objection on ground of superfluity of counts, can be taken on demurrer, Gardner *v.* Bowman, 4. Tyr. 412.

The rule for striking out counts founded on the same matter of complaint, should be drawn up on reading the declaration, or upon affidavits that they are identical. Roy *v.* Bristow, 5 Dowl. 452. Two counts describing the same contract, are not to be allowed, though the defendant is described in one of them as *jointly* responsible in the other as *severally*. Cholmondeley *v.* Payne, 5 Dowl. 638, but see also Brindey *v.* Dennet, 2 Bing. 184. Lawrence *v.* Stephens, 3. Dowl. 777. Jenkins *v.* Treloar, 1 M &W. 16. Thornton *v* Whitehead, 1 M.&W. 14.

In James *v* Bourne, 4. Bing. N. S. 420, the declaration contained a count on a promise to carry goods from *Dublin* to *London*, and a count on a promise to carry the same goods from the wharf at which they should be landed in London, to the plaintiff's place of business; Held, that the joining of these counts was not an apparent violation of the rule. Tindal. C. J. observed "Taking the whole "of the evidence given in connexion with the rule, I think it means, that, if "there be a second and distinct contract in respect of the same subject matter, "the count on such contract may stand, and that it would be an unnecessary "extension of the rule to strike it out."

Although there has been but one transaction between the parties, yet there may have been several causes of action arising out of it, which may be made the subject of several counts, Tidd new Prac. 218.

(1) In Ward *v.* Bell, 2 Dowl. 76, it was held, before the passing of this rule, that where several special counts are inserted on the same general agreement, the plaintiff is entitled to a verdict on one count only, and to the costs of that count. A bill of exceptions, would lie, if a Judge were to direct that all the counts were proved.

See cases collected in Chitty's Archb. 6th ed. 1185.

all cases in which *an application to a Judge* has been made under the preceding rule, and any count, plea, avowry, or cognizance allowed, as aforesaid, upon the ground that some distinct subject matter of complaint was *bona fide* intended to be established at the trial, in respect of each count so allowed, or some distinct ground of answer or defence in respect of each plea, avowry, or cognizance, so allowed, *if the Court* before whom the trial is had, shall be of opinion, *that no such distinct subject matter of complaint was bona fide* intended to be established, in respect of each count so allowed, or no such distinct ground of answer or defence in respect of each plea, avowry, or cognizance so allowed, and shall endorse the same on the record before final judgment, such party, so pleading, *shall not recover any costs upon the issue or issues upon which he succeeds*, arising out of any count, plea, avowry, or cognizance, with respect to which the Court shall so indorse. (1)

if more than one count, plea, &c. under the Judge's order, and Court indorse on record that no distinct matter was intended to be established,

No costs to party so pleading and succeeding.

G. R. H. T. 4 W. 4

9. That the Court, if it shall see fit so to do, will cause the record, writ, or document on which any trial may be pending before such Court, in any civil action or proceeding, or a mandamus, when any variance shall appear between the proof and the recital, or setting forth, on the record, writ, or document on which the trial is proceeding, of any contract, custom, prescription, name, or other matter, in any particular or particulars in the judgment of the Court not material to the merits of the case, and by which the opposite party cannot have been prejudiced in the conduct of his action, prosecution, or defence, to be forthwith amended by the officer of the Court, both in the part of the pleading where such variance occurs, and in every

In cases where a variance shall appear between the proof and recital of matter immaterial, and no prejudice appearing, Court may order record to be amended, on such terms as deemed reasonable.

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(1) The common counts given by rule 2, *ante* 39, are considered as *separate* counts, within the meaning of rule 6, *ante* 43, for the purposes of *pleading*, as well as *costs*, Jourdain *v* Johnson, 2 Cromp. M. & R. 564. S. C. 4 Dowl. 534. Tidd new Prac. 220.

See Chitty's observations on this rule, 3 Prac. Law, 483; and see 2*d*. *Rep. Com. Law Com.* 34, 35, *et seq.*

As to costs on issues, see Probart *v.* Phillips, 5 Dowl. 473; Knight *v.* Woore 5 Dowl. 487; Staley *v.* Long, 3. Bing. N. S. 781.

other part of the pleadings which it may become necessary to amend, on such terms as to payment of costs to the other party, or postponing the trial, or both payment of costs, and postponement, as the Court shall think reasonable; and in case such variance shall be in some particular or particulars, in the judgment of the Court not material to the merits of the case, but such as the opposite party may have been prejudiced thereby in the conduct of his action, prosecution, or defence, then such Court will cause the same to be amended, upon payment of costs to the other party, and postponing the trial, as such Court shall think reasonable; and after such amendment the trial shall proceed as if no such variance had appeared; and the order for amendment shall be entered on the roll upon which the trial shall be had; provided that any party who shall be dissatisfied with the decision of the Court respecting their allowance of any such amendment, may apply to the Court for a new trial on that ground, and in case the Court shall think such amendment improper, a new trial may be granted on such terms as the Court shall think fit, or the Court may make such other order as to them may seem meet. (1)

If variance immaterial, but party may have been prejudiced, then, on payment of costs and postponement, as reasonable.

After amendment trial to proceed as if no variance had appeared, and order entered on roll.

Proviso that party dissatisfied may apply for new trial on that ground.

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(1) This rule is taken from the 23 §. 3 & 4 W. IV. c. 42. The Bombay rules, framed by the late Sir Edward West, Chief Justice, contain still more extensive powers of amendment. They provide, "that the Court may at any time, "before or at the trial of any cause, amend any formal errors or mistakes in "the plaint, upon such terms as justice may require;" And that "the above "rule shall be considered to extend, in particular, to cases of contract in "which too many parties may be joined, as plaintiffs or as defendants, if the "Court shall be of opinion, that the defendant has not been misled, by the "mistake, and that justice will, in the particular case, be obtained by the "amendment." Under the Stat. 9 G. IV. c. 15, amended by the 3 & 4 W. IV., c. 42, the Judges, at *nisi prius*, will in general amend any variance which does not go at all to affect the matter really in dispute between the parties, and which was not likely to mislead the opposite party, Alderson B., in Hemming *v.* Parry, 6 C. & P. 580. This was assumpsit on the warranty of a horse, a general warranty of soundness was declared on, and the warranty proved was of soundness "except in one foot." The Judge allowed the declaration to be amended, the real dispute being whether the horse was a roarer.

See Hanbury *v.* Ella, 1 Ad. & Ell. 61, Hill *v.* Salt, 2 C. & M. 420. Doe d. Marriott *v.* Edwards, 6 C. & P. 208. Lamey *v.* Bishop, 4. B. and Adol. 479. Prudhomme *v.* Fraser, 1 M. & R. 435. Mash, *v.* Densham, 1. M. & R. 442. Ivey *v.* Young, Ibid 545, and see other cases collected in Tidd new Prac. 515 and 516, and Chitt. Arch. Prac., 6th ed. 435.

PLEAS, &c.

Commencement and conclusion of pleas, &c.

Actio non.

Precludi non.

Prayer of judgment.

Estoppel.

See G. R. H. T. 4 W. 4.

10. In a plea or subsequent pleading, intended to be pleaded in bar of the whole action generally, it shall not be necessary to use any allegation of *actio non*, or to the like effect, or any prayer of judgment, nor shall it be necessary in any replication or subsequent pleading, intended to be pleaded in maintenance of the whole action, to use any allegation of *precludi non*, or to the like effect, or any prayer of judgment; and all pleas, replications, and subsequent pleadings, pleaded without such formal parts as aforesaid, shall be taken, unless otherwise expressed, as pleaded respectively, in bar of the whole action, or in maintenance of the whole action, provided that nothing herein contained shall extend to cases where an *estoppel* is pleaded.(1)

Form of defence.

See G. R. H. T. 4 W. 4.

11. No *formal defence* shall be required in a plea, and it shall commence as follows: "The said defendant, by ——, his Attorney [or "in person," &c.] says that."

Words "by leave of the Court," &c. to be omitted.

See G. R. H. T 4 W. 4.

12. It shall not be necessary to state, in a second or other plea or avowry, that it is pleaded by leave of the Court, or according to the form of the statute; or to that effect.

Protestation.

See G. R. H. T. 4 W. 4.

13. No protestation shall hereafter be made in any pleading; but either party shall be entitled to the same advantage in that or other actions, as if a protestation had been made.

Traverses, to conclude to the Court.

See G. R. H. T. 4 W. 4.

14. All special traverses, or traverses with an inducement of affirmative matter, shall conclude to the Court.

Provided, that this regulation shall not preclude the opposite party from pleading over to the inducement, when the traverse is immaterial.

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(1) Putney *v.* Swan, 5 Dowl. 296, Parke B. "This rule appears to have "been generally misunderstood. The object of this rule is, to prevent unnecessary "statements in pleading; and when it is said, that pleas without the formal parts "shall be taken to be pleaded in bar of the whole action, it must be understood "they are pleaded in bar, to further maintenance."

This rule applies to a plea answering the whole of the count to which it is pleaded, though there are other counts which it does not answer. Bird *v.* Higginson 4. Ad. & Ell. 824.

15. That where the plaintiff shall proceed by summons against the defendant, he may have a rule of course, and shall enter the same in the office of the Clerk of the papers, for the defendant to plead in four days, and the defendant or his Attorney shall, on the day appointed for his appearance, file a common appearance in the office of the Prothonotary; and if such rule shall have been so entered, the defendant or his Attorney, at the time of filing such appearance, shall take notice of the same, and shall plead within four days after the day he shall have filed his appearance, without any further service of any rule or demand of plea; but if no such rule shall have been entered as aforesaid, then such defendant shall not be compelled to plead until four days after such plaintiff or his Attorney shall have entered a like rule to plead with the Clerk of the papers, and shall have served the same on the defendant or his Attorney.

Where proceeding by summons, plaintiff may enter rule to plead of course, &c. and defendant to appear, &c.

If entered, defendant to plead without service, or demand of plea.

If not entered then not until, &c.

See former Pl. R. 30.

16. It is ordered, that in every suit commenced by plaint, where the defendant shall have appeared and pleaded, he shall be at liberty to serve the plaintiff's Attorney with a rule to reply, plead in bar, surrejoin, join in demurrer, enter the issue, or demurrer, as the case may be, within four days from the time of delivering such rule; and if the plaintiff shall not reply, &c. within the said four days, or such other time as may be allowed by the Court, or by an order signed by a Judge thereof, the defendant shall be at liberty to sign a judgment of non pros; but if no proceedings shall have been had for four Terms, then there shall be a Term's rule to reply, &c.

When defendant has pleaded, he may serve plaintiff with rule to reply, &c. in four days, and if plaintiff makes default, &c., may sign non pros.

What if no proceedings for four Terms.

See former Pl. R. 97.

17. To entitle a plaintiff to discontinue after plea pleaded, it shall not be necessary to obtain the defendant's consent, but the rule shall contain an undertaking on the part of the plaintiff to pay the costs, and a consent, that if they are not paid within four days after taxation, defendant shall be at liberty to sign a non pros. (1)

Plaintiff entitled to discontinue after plea pleaded in payment of costs.

See G. R. 106 H. T. 2 W. 4.

18. That in every suit commencing by plaint, the rule for all pleading be taken out from and entered in a book,

Rules for pleading to be taken

(1) After plea pleaded, a rule to discontinue in the Common Pleas, was a rule to shew cause. The latter part of this rule is new. Tidd, 9th ed. 484. 680.

from Clerk of the papers.

Papers and pleadings to be delivered to him.

to be kept for that purpose by the Clerk of the papers; and that all the pleadings in every cause be, at the several times required by the rules of this Court, or by order signed by any Judge of this Court, delivered to the said Clerk; and that where any defendant shall appear, or where the plaintiff shall have delivered his pleading in the cause in answer to any plea, rejoinder, or other pleading of the defendant, unto the Clerk of the papers, and shall have entered it with the said Clerk, and duly served the defendant or his Attorney, with a rule to put in his plea, rejoinder, or other pleading, as the state of the case may require, the defendant shall put in his plea, rejoin, or otherwise plead, as the case may require, within four days, and shall not be entitled to further time to plead, except it be otherwise ordered by this Court or a Judge thereof; and that if either party do, in his pleadings, make *profert* in curiam of any deed or writing, and the other party shall pray oyer thereof, he shall have as many days to put in his plea or other pleading after oyer shall have been granted him, (which shall be granted without motion) as he had to plead at the time oyer was demanded, and shall, at the end of the said time, deliver as aforesaid, such pleading as the case may require, without any further rule or notice whatsoever; and, in all actions where either party shall demand particulars, and particulars shall be granted, he shall have as many days to put in his pleading after particulars given, as he had at the time of demanding particulars.

Defendant to plead, &c., in four days after appearance or rule to plead, &c. served, unless, &c.

When, after oyer granted.

When party to plead after particulars given.

See former Pl. R. 31.

When judgment by default may be signed against defendant, after appearance.

See B.Pl.R. 32.

19. That defendant, after appearance, shall file his plea, and in all other stages of the cause, such pleadings as may be requisite, within the time limited by these rules, after the receipt of a rule for that purpose, in default whereof of plaintiff may sign judgment. (1)

In debt, except on bond, &c., no final judgment by default, &c. to be signed till interlocutory judgment signed, and damages assessed or computed.

20. That in debt, except where the action is brought on a bond, judgment, or recognizance, or where the judgment is entered up under warrant of attorney, no final judgment by default of the defendant, or on demurrer, or nul tiel record shall be signed, until interlocutory judgment

(1) This rule is taken from the Bombay rules, proceeding to judgment by default having been long since adopted by the Court at Bombay.

be first signed, and the amount to be recovered be duly assessed or computed thereon, as in other actions. (1)

New Rule.

See 3d Rep. C. L. Com. 64, 87

21. After interlocutory judgment in any action of assumpsit or debt on a bill of exchange, (whether inland or foreign, and whether payable in sterling or foreign money,) promissory note, or banker's check, or in any action on an award, where brought for non-payment of money only, or in any action of covenant, or debt upon covenant, where brought for non-payment of money only, the Prothonotary shall compute the principal to be recovered, and the interest, where interest is payable, as of course, without rule or order for that purpose, upon an appointment to be obtained from the Prothonotary ; unless a rule be granted, that the damages be inquired into and assessed by the Court.

After interlocutory judgment, Prothonotary to compute principal, &c. to be recovered unless, &c.

See 3d Rep. C L. Com. 64. 87.

22. In all cases in which the Prothonotary shall have computed the principal and interest under the above rule, final judgment may be signed and execution forthwith issued; unless the Court or a Judge thereof, shall think fit to order, that judgment or execution shall be stayed, till a day to be named in such order.

Where principal, &c. has been computed, final judgment may be signed, and execution issued, unless, &c.

New Rule.

23. That no notice of set-off be in any case given, but that set-off be always pleaded, and that with every plea of set-off, defendant shall file full particulars of his set-off, when such particulars can be comprised within three folios, and when the same cannot be comprised within three folios, he shall file such statement of the nature of his set-off as may be comprised within that number of folios ; And to secure the filing of particulars in all such cases, it is further ordered, that if any plea of set-off shall be filed without such particulars or such statement as aforesaid,

Set-off always to be pleaded, with full particulars, when within three folios, otherwise a statement, &c.

If plea filed without, no costs to be allowed to defendant on subsequent order for particulars.

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(1) When the sum to be recovered is in its nature fixed, or when it is settled by agreement of parties, as in actions on bonds or judgments or recognizances, or where the defendant has given a warrant of attorney to confess judgment, it may be right that the plaintiff obtaining judgment by default, or on demurrer, or nul tiel record, should obtain final judgment, in the first instance, for the sum he claims, without interlocutory judgment, or any assessment of the amount; but, in other instances, it is objectionable, from its affording no sufficient check against the plaintiff entering up judgment, and taking out execution for more than is really due. See 3d *Rep. Com. Law Com.* 73.

and a Judge shall afterwards order a delivery of particulars, the defendant shall not be allowed any costs, in respect of any summons for the purpose of obtaining such order, or of the particulars he may afterwards deliver. And the particulars of the set-off shall be annexed by the Prothonotary to every record before the cause is called on for trial. (1)

Such particulars to be annexed to record.

New Rule.

See 3d Rep. C. L. Com. 87.

24. It is ordered, that no rule to shew cause, or motion, shall be required, in order to obtain a rule to plead several matters, or to make several avowries, or cognizance, but that such rules shall be *drawn up, upon a* Judge's order, to be made upon a *summons, accompanied* by a short abstract, or statement of the intended pleas, avowries, or cognizances; provided that no summons or order shall be necessary in the following cases, that is to say, where the plea of non-assumpsit, or nil debet or non detinet, with or without a plea of payment or tender as to part, a plea of the statute of limitations, set-off, bankruptcy of the defendant, discharge under an insolvent act, plene administravit, plene administravit præter, infancy and coverture, or any two or more of such pleas, shall be pleaded together; but in all such cases, a rule shall be drawn up by the proper officer, upon the production of the pleas, or a draft or copy thereof. (2)

Rule to plead several matters, to be drawn up on Judge's order on summons, &c.

In what cases no summons or order necessary.

See G. R. 13. T. T. 1. W. 4.

25. If a party plead several pleas, avowries, or cognizances, without a rule for that purpose, the opposite party shall be at liberty to sign judgment.

Double pleading.

See G. R. 34, H. T. 2 W. 4.

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(1) In the case of Graham *v.* Partridge, 5 Dowl. 108, it was held, that notwithstanding the provisions of 2 G. II. c. 22. § 13, a set-off must be specially pleaded under the new rules. The Common Law Commissioners recommended, that a set-off should *always* be pleaded, (whether their recommendation as to the abolition of the general issue was adopted or not) because it enables the plaintiff to make his proper reply to the set-off, and tends to bring the matter in dispute to precise issues. *3d Rep. Com. Law Com.* 62.

As to particulars, see Swain *v.* Roberts, 1 M. & Rob. 452. A defendant who has not complied with a Judge's order to deliver particulars of set-off *with dates*, will not be allowed to give any evidence of his set-off. Particulars delivered in which the only dates were "from *January* 1828 t *January* 1834," are not a compliance with such an order.

(2) The 3 & 4 W. IV. c. 42. § 21, allows money to be paid into Court even in certain actions for torts. Perhaps this may have been considered an alteration, by statute, of the Common Law which could not be introduced as a rule of Court.

26. When money is paid into Court, such payment shall be pleaded in all cases, and, as near as may be, in the following form, *mutatis mutandis*. (1)

Payment of money into Court.

Form of pleading. See G. R. 17. H.T. 4 W. 4.

C. D. ats. A. B. } The —— day of ——,

The defendant by ——— his Attorney, [or "in person," &c.] says, that the plaintiff ought not further to maintain his action, because the defendant now brings into Court the sum of Co.'s Rs. ———, ready to be paid to the plaintiff; and the defendant further says, that the plaintiff has not sustained damages [or, in actions of debt "that he is not indebted to the plaintiff,"] to a greater amount than the said sum, &c. in respect of the cause of action in the plaint mentioned, and this he is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his action. (2)

27. No Rule or Judge's order to pay money into Court shall be necessary, but the money shall be paid to the proper officer of the Court, who shall give a receipt for the

No rule or order required to pay money into Court.

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(1) See Bagley's Chamber Prac. 271. When there are several pleas, no two of which are in answer to the same part of the declaration, no rule to plead double is necessary, a distinction which is not always attended to in practice.

(2) A plea of payment into Court must follow this form, and if other pleas are pleaded to part of the plaintiff's demand, the plea of payment into Court should be put last and pleaded to the residue. Sharman *v.* Stevenson, 3 Dowl. 709. Coates *v.* Stephens, Ibid. 784. On a plea of payment, if that be the only one, the defendant is bound to begin, Richardson *v.* Fell, 4 Dowl. 10.

If a plea states a payment, or a set-off, to a certain amount, but the whole is not proved, the defendant cannot have a verdict on the whole plea, although the sum is alleged under a *videlicet;* but the plea may be taken distributively, and found partly for the defendant and partly for the plaintiff. Cousins *v.* Paddon, 4 Dowl. 488. If the plaintiff replies *nun quam indebitatus* to a plea of set-off, and the defendant proves his plea, the plaintiff will not be at liberty under his replication, to show that the sum proved, or even any part, has been paid. The new rules of pleading do not apply to replications. Brown *v.* Daubeny, 4 Dowl. 585; see also Isaac *v.* Farrar, Ibid. 759.

Payment should be pleaded in confession and avoidance, and must conclude with a verification. Goodchild *v.* Pledge, 5 Dowl. 89. When money is paid into Court, payment should in all cases be pleaded. Adlard *v.* Booth, I. Bing. N. S. 693. For forms of plea of payment, see Mee *v.* Tomlinson, 4 A. & E. 262, Marshall *v.* Whiteside, I. M. & W. 191, 4 Dowl. 766. Booth *v.* Howard; 5 Dowl. 438, see also Tidd new Prac. 310, See *ante* 40. note (2).

See G. R. 18. T. H. 4 W. 4.

amount in the margin of the plea, and the said sum shall be paid out to the plaintiff on demand.

The plaintiff may reply to a *plea of payment into Court*, by accepting the sum so paid in and tax his costs. In default of payment, may sign judgment for costs.

or he may reply, &c.

If issue found for defendant, judgment for him, unless, &c.

See G R. 19. H. T. 4 W. 4.

28. The plaintiff, after the filing of a plea of payment of money into Court, shall be at liberty to reply to the same, by accepting the sum so paid into Court, in full satisfaction and discharge of the cause of action in respect to which it has been paid in, and he shall be at liberty in that case to tax his costs of suit, and, in case of non-payment thereof, within forty-eight hours, to sign judgment for his costs of suit so taxed; or the plaintiff may reply, "that he has sustained damages [or, "that the defendant is indebted to him," as the case may be,] to a greater amount than the said sum;" and, in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment and his costs of suit, unless the Court shall otherwise order.

When tender pleaded, money to be deposited with the proper officer.

Plaintiff how to proceed.

29. That whenever a tender shall be pleaded, the money shall be deposited with the proper officer of the Court, who shall give a receipt for the amount in the margin of the plea, and the said sum shall be paid out to the plaintiff on demand, who shall write a receipt on the back of the plea, and if the plaintiff shall accept the same in full satisfaction and discharge of his suit, he shall, by his said receipt, acknowledge that the same was so received; and, in such case, the plaintiff shall pay to the defendant his costs, unless the Court shall otherwise order.

See former Pl. R. 34.

Dilatory plea, without affidavit of truth, treated as no plea.

30. That if any dilatory plea be filed without affidavit, first made before some Judge of this Court, of the truth thereof, the plaintiff may proceed in like manner as where the defendant shall have put in no plea.

See former Pl. R. 39.

Restriction as to plea in abatement for non-joinder of a co-defendant.

31. No plea in abatement, for the non-joinder of any person as a co-defendant, shall be allowed, unless it shall be stated in such plea, that such person is subject to the jurisdiction of the Court, and unless the manner in which the person is so subject to the jurisdiction, shall be stated, with convenient certainty, in an affidavit verifying such plea. (1)

See 3 & 4. W. 4. c. 42. § 8.

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(1) In the case of Atkinson *v.* Page, Keeble and Petrie, January 1786; Chambers C. J., Hyde and Jones, Js. held, after argument, a demurrer to a plea in

32. That it shall not be necessary that any pleadings which conclude to the Court here, and which in the superior Courts of common law at Westminster would conclude to the country, shall be signed by Counsel.

Pleas to the Court need not be signed by Counsel.
See G.R. 10. H. T. 2 W. 4.

33. That in all cases in which a misnomer would be pleadable in abatement, the defendant shall be at liberty to cause the plaint to be amended at the cost of the plaintiff, by inserting the right name, upon a Judge's summons, founded on an affidavit of the right name; and, in case such summons shall be discharged, the costs of such application shall be paid by the party applying, if the Judge shall think fit.

Misnomer not to be pleaded in abatement, but plaint amended on summons.
See 3 & 4 W. 4. c. 42.

34. In all actions by and against assignees of a bankrupt or insolvent, or executors or administrators, or heirs or representatives, or persons lawfully authorized to sue or be sued as nominal parties, the character in which the plaintiff or defendant is stated on the record to sue or be sued, shall not, in any case, be considered as in issue, unless specially denied.

In actions by and against assignees, executors, &c. their character not in issue, unless specially denied.
See G. R. 21 H. T. 4 W. 4.

35. That no plea shall be considered as admitting the jurisdiction, if the defendant, at the time of filing his plea, shall give notice of his intention to dispute the same.

Jurisdiction not admitted by plea, if notice to dispute.
New Rule.

PLEADINGS IN PARTICULAR ACTIONS.

ASSUMPSIT.

36. In all actions of assumpsit, except on bills of exchange and promissory notes, the plea of non-assumpsit shall operate only as a denial in fact of the express contract or promise alleged, or of the matters of fact from which the contract or promise alleged may be implied by law. (1)

In assumpsit, except on bills of exchange & promissory notes, plea of non-assumpit how to operate.
See G. R. H. T. 4 W. 4.

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abatement good, it not being averred by the plea, that other parties not named in the plaint, *were alive, and within the jurisdiction*. See Hyde's MSS. notes, and Smoult's collection of orders, 101.

(1) A declaration in assumpsit states, that the defendant upon a certain consideration therein set forth, made a certain promise to the plaintiff. The general

Instances.

Warranty.

Policy.

Ex. gr. In an action on a warranty, the plea will operate as a denial of the fact of the warranty having been given upon the alleged consideration, but not of the breach; and in an action on a policy of insurance, of the subscription to the alleged policy by the defendant, but not of the interest, of the commencement of the risk, of the loss, or of the alleged compliance with warranties.

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issue in this action states, that the defendant "did not promise and undertake in manner and form, &c." This, at first sight, would seem to put in issue, merely the fact of his having made a promise such as alleged; a much wider effect, however, was given in *practice* to this plea before the establishment of these rules. The origin of this practice is thus stated by Mr. Stephen, in his excellent treatise. "The law will always *imply* a promise in consideration of an "existing debt or liability, and the action of assumpsit may, consequently, be "founded on a promise either *express* or *implied*. When the promise relied "on was that of the *latter* kind, and the defendant pleaded the general issue, "the plaintiff's mode of maintaining the affirmative of this issue, on the trial, "was, of course, by proving the debt or liability on which the implied promise "would arise; and, in such case, it was evidently reasonable that the defen-"dant also should, under his plea denying the promise, be at liberty to show any "circumstance by which the debt or liability was disproved; such, for exam-"ple, as performance or a release. Accordingly in actions on *implied* assump-"sits, this effect was, on the principle here mentioned, allowed to the general "issue. I Chitt. Pl 473. But it was at first allowed in the cases of implied as-"sumpsit *only*; and, where an *express* promise was proved, the defendant, in "conformity with the language and strict principle of his plea, was permitted, "under the general issue, only to contest the fact of the promise, or, at most, to "show that, on the ground of some illegality, it was a promise void in law. This "practice, however, was by relaxation gradually applied to all those on *express* "promises also; and, at length, in *all* actions of assumpsit, without distinction, "the defendant was, under the general issue, permitted not only to contend "that no promise was made, or to show facts impeaching the validity of the "promise, but to prove any matter of defence whatever, which tended to deny "his debt or liability, with a few exceptions only. This is a great deviation "from principle; for it is to be observed, that many of these matters of defence "are such, as, in the case of express promise, ought regularly to be pleaded "in *confession* and *avoidance*. Thus, if the defendant be charged with an "express promise, and his case be, that after making such promise, it was *re-*"*leased* or *performed*, this plainly *confesses* and avoids the declaration. To "allow the defendant, therefore, to give this in evidence under the general issue, "which is a plea by way of *traverse*, is to lose sight of the distinction between "the two kinds of pleadings." See Stephen on Pleading, p. 180. Fits *v.* Freestone, 1 Mod 210. Vin. Ab. Evidence, (Z.a). Paramour *v.* Johnson, 12 Mod. 377. 1 Lord Raymond, 566. In the second report of the Commissioners appointed to inquire into the practice and proceedings of the superior Courts of common law, the Commissioners (namely Bosanquet, Stephen, Alderson and Pattison) state, that they entertain no doubt of the expediency of making such alterations in the practice as will introduce special pleas in almost every case, and in some actions abolish, altogether, the use of the general issue; and amongst their reasons for so doing, the following would appear applicable here. They state, "Special pleading, considered in its principle, is a

In actions against carriers and other bailees, for not delivering or not keeping goods safe, or not returning them on request, and in actions against agents for not accounting, the plea will operate as a denial of any

Carriers. Bailees. Agents.

"valuable forensic invention peculiar to the common law of England, by the "effect of which, the precise point in controversy between the parties is deve- "loped, and presented in a shape fit for decision. If that point is found to "consist of matter of fact, the parties are thus apprised of the exact nature of "the question to be decided by the Jury, and are enabled to prepare their proofs "with proportionate precision. If, on the other hand, it turns out to be matter "of law, they have the means of immediately obtaining the decision of the cause "without the expense and trouble of a trial, by demurrer, that is by referring "the legal question, so evolved, to the determination of the Judges. But where, "instead of special pleading, the general issue is used, and under it, the defen- "dant is allowed to bring forward matters in confession and avoidance, these "benefits are lost. Consisting, as that plea does, of a mere denial of the case "stated by the plaintiff, and giving no notice of any defensive allegation on "which the defendant means to rely, it sends the whole case on either side, to "trial, without distinguishing the fact from the law, and without defining the "exact question or questions of fact to be tried. It not unfrequently, "therefore, happens, that the parties are taken by surprise and find themselves "opposed by some unexpected matter of defence or reply, which, from the "want of timely notice, they are not in due condition to resist. But an effect "of more common, and indeed almost invariable occurrence, is the unneces- "sary accumulation of proof, and consequently of expense, for, as nothing is "admitted upon the pleadings, each party is obliged to prepare himself, as far "as it is practicable, with evidence upon all the different points which the "nature of the action can by possibility make it incumbent upon him to estab- "lish, though many of them may turn out to be undisputed, and many of "them may be such as his adversary, if compelled to plead specially, would "have thought it undesirable to dispute. With respect to matters of law, the "inconvenience experienced, though of a different kind, is not less remarkable, "for when points of law arise upon the general issue, instead of being deve- "loped, by way of demurrer, for adjudication by the full Court in *banc*, they "are of necessity left to the decision of the single Judge, before whom the cause "is tried; and their decision, upon his sole authority, deprived as he gene- "rally is of any previous intimation of the matter to be argued, and unable "to refer to books, is often found to be unsatisfactory and inconclusive. It "may even happen, (and that is not an unfrequent occurrence) that the "controversy, under this form of plea, turns *entirely* upon matter of law, there "being no fact really in dispute; and, in that case, the mode of decision by "jury is not only defective but misplaced, and the trial might have been "spared altogether, if the parties had proceeded by the way of special plead- "ing, and raised the question upon demurrer. Another ill consequence "attendant upon the general issue, is, that as the true point for decision has not "been evolved in the pleading, it becomes the business of the Judge to ex- "tract it from the proofs and allegations before him, to sever correctly the "law from the fact of the case; and again, the facts admitted from those "in controversy, and to present the latter in a distinct shape to the jury for "their consideration, and analysis, which the rapidity and tumult of a trial "at nisi prius renders extremely difficult, and which is often defectively "conducted."

express contract to the effect alleged in the plaint, and of such bailment or employment as would raise a promise in law to the effect alleged, but not of the breach.

Goods sold.

In an action of indebitatus assumpsit, for goods sold and delivered, the plea of non-assumpsit will operate as a denial of the sale and delivery in point of fact; and in the like action for money had and received, it will operate as a denial both of the receipt of the money, and the existence of those facts which make such receipt by the defendant a receipt to the use of the plaintiff.

Money had and received.

In actions on bills and notes, plea of non assumpsit abolished.

See G. R. H. T. 4 W. 4.

37. In all actions upon bills of exchange and promissory notes, the plea of *non-assumpsit* shall be inadmissable. In such actions, therefore, a plea in denial must traverse some matter of fact; *ex. gr.* the drawing, or making, or indorsing, or accepting, or presenting, or notice of dishonour of the bill or note (1)

In every species of assumpsit, matters in confession and avoidance, must be specially pleaded.

Instances.

Infancy.

Coverture.

Release, &c.

See G. R H. T. 4 W. 4.

38. In every species of assumpsit, all matters in confession and avoidance, including not only those by way of discharge, but those which show the transaction to be either void or voidable in point of law, on the ground of fraud, or otherwise, shall be specially pleaded; *ex. gr.* infancy, coverture, release, payment, performance, illegality of consideration, either by statute or common law, drawing, indorsing, accepting, &c. bills or notes by way of accommodation, set-off, mutual credit, unseaworthiness, misrepresentation, concealment, deviation, and various other defences, must be pleaded. (2)

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(1) The language of the rule applies, however, only to cases where the action is *only* on the bill or note, and on the promise to pay, contained in it or implied by law from it, and the rule is to be read as if it were worded thus - "*In all actions on bills of exchange and promissory notes, simpliciter, without any other matter.*" If, therefore, an executor declares on a bill payable to his testator, laying also a promise to himself, such latter promise involves *other matter* not contained in the bill or note itself, or any thing implied out of it, and sets up a new and independent contract, which is properly denied by the general issue. Timms *v.* Platt, 2 M. & W. 720. Lutwyche on principles of Pleading, p. 21, and see Ryder *v.* Ellis, 8 C. & P. 357.

See the decisions on this rule collected in Tidd new Prac. 351. Chitt. *Jun.* Pl 253. 1 Chitt. *Jun.* on bills.

(2) It would seem that an objection to the number of parties on the record, when a bar to the action, may still be taken advantage of under the general

39. In actions on policies of assurance, the interest of the assured may be averred thus: "That A. B. C. and D. or some or one of them, were or was interested, &c." And it may also be averred, "that the assurance was made

In actions on policies of assurance, interest how to be averred.

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issue; thus, if too many persons are joined,—a contract with A. & B. is not a contract with A. B. & C. and *non-assumpsit* puts in issue the original existence of the contract *as stated* in the declaration. So also the non-joinder of a party, may be taken advantage of, at the trial, on the plea of *non-assumpsit*. See Tidd new Prac 341, 1 Chitt. *Jun.* 204 So also where the wrong person has been made plaintiff or defendant, Eliot *v.* Morgan, 7 C. & P. 334. So where the plaintiff and defendant are partners and the cause of action arises out of partnership transactions, &c. and, no balance has been struck, Worrall *v.* Grayson, 1 M. & W. 166. Pearson *v.* Skelton, Ibid. 504. per Parke, B. So where the action is on a joint contract and one or more plaintiffs are liable with defendant to the performance of it. 1 Tidd new Prac. 342. It is competent for the defendant, under the general issue, to shew that the contract entered into was incompatible or inconsistent with, or in qualification of the contract declared on, or that there is a material variance between the contract set out in the declaration and the contract really made.

See Jones *v.* Nanney, 1 M. & W. 336. Morgan *v.* Pebrer, 3 Bing. N. S. 457. Whittaker *v.* Mason, 2 Bing. N. S. 359. Broomfield *v.* Smith, 1 S. M. & W. 542. Gardner *v.* Alexander, 3 Dowl. 146. Hayselden *v.* Staff, 5 A. & E. 153. Gwillim *v* Daniel, 2 C. M. & R. 67. Jones *v.* Reade, 5. A & E. 529. Lane *v.* Glenny, 7 A. & E. 83.

Where a contract has been rescinded by a *subsequent* agreement between the parties, it must be pleaded specially, *aliter* if a power was given in the original contract to *rescind*. Cock *v.* Coxwell, 2 C. M. & R. 291. Grounsell *v.* Lamb, 1 M. & W. 352. In an action on an *express* contract, want of consideration or other matter than a direct denial of the contract, cannot be given in evidence under *non-assumpsit*. Passenger *v.* Brookes, 1 Bing. N. S. 587; and see Bennion *v.* Davison, 3 M. & W. 183, per Parke B. But when the plaintiff declares in an action of *indebitatus assumpsit*, or an *implied contract*, he must, it seems, prove on the general issue, as a part of the contract, the consideration on which it is founded, and the defendant will be let into evidence to prove the want of consideration, Tidd new Prac. 342.

Illegality of consideration either by statute or common law, must be specially pleaded Icely *v.* Grew, 6 C. & P. 671. Woodhouse *v.* Swift, 7 C. & P. 310. Tabram *v.* Warren, 1 Tyr & G. 153. Potts *v.* Sparrow, 1 Bing. N. S. 594. Barnett *v.* Glossop. 1 Bing. N. S. 633. DePinna *v.* Polhill, 8 C. & P. 78. Shearwood *v.* Hay, 5 A. & E. 383. Moore *v.* Dent, 1 M. & Rob. 462. Syms *v.* Chaplin, 5 A. & E. 634. It seems now settled, that the defence that there is no contract *in writing* pursuant to the fourth section of the statute of frauds, ought to be specially pleaded. See Tidd new Prac. 343. Lutw. Princ. Pl. 35. 1 Chitt. *Jun.* Pl. 305. Smith *v.* Dixon, 4 Dowl. 571. The breach of the contract, if not meant to be admitted, must be traversed either in a rejective or affirmative form, Tidd new Prac. 350. Smith *v.* Parsons, 8 C. & P. 199. A plea can only be applied to breach of contract alleged and not to the special damage laid as resulting from such breach. Porter *v.* Izat, 1 Tyr & G. 639. There being no mode of traversing the damages laid in the declaration specially, in an action of *assumpsit*, the defendant was allowed to give evidence in reduction of them under the plea of *non-assumpsit*. Shirley *v.* Jacobs, 4 Dowl. 136, 2 Bing.

for the use and benefit, and on the account of the person or persons so interested." (1)

DEBT.

In debt on a specialty or covenant, plea of non est factum, how to operate.

See G. R. H. T. 4 W. 4.

40. In debt on a specialty or covenant, the plea of *non est factum* shall operate as a denial of the execution of the deed in point of fact only, and all other defences shall be specially pleaded, including matters which make the deed absolutely void, as well as those which make it voidable. (2)

Nil debet abolished.

41. The plea of "*nil debet*" shall not be allowed in any action. (3)

N. S. 88 S. C. Though in debt, payments must have been pleaded, Belbin *v.* Bott, 5 Dowl. 604. But see *ante* 40, note (2). It appears the new pleading rules have decided in all cases, that payments shall be pleaded. These rules have not as yet been introduced here, and payments have been allowed to be given in evidence in reduction of damages. A few principles of pleading established by decisions on this rule, have been inserted in this note, but see the cases on this rule collected and arranged under the distinct heads, in Tidd new Prac. 339 to 351.

(1) This rule allows the interest of the party assured, to be averred in the *alternative*, contrary to the general principles of pleading, which will not admit of alternative allegations. The object of this particular rule was to prevent the necessity for several counts varying the statement of the parties interested, and, by permitting the alternative allegation, to render one count sufficient. See reasons for this rule, 3*d Rep. Com. Law Com.* 51.

(2) Prior to this rule, the defendant might, under the general issue, *non est factum*, in debt on specialty, and in covenant, show, that he never executed the deed as alleged, or that its execution was absolutely void in law, but matters that made the deed *voidable* only, and not absolutely *void*, must have been specially pleaded. Now, *all* defences, but the denial of the deed, must be specially pleaded, including matters which make the deed absolutely *void* as well as those which make it *voidable*, therefore coverture, lunacy, or erasure by the obligee, must be specially pleaded, as well as infancy, or duress. *Payment* cannot be given in evidence in mitigation of damages, but must be pleaded. Belbin *v.* Bott, 5 Dowl. 604.

(3) The general issue, in *debt on simple contract*, was adapted to any kind of defence that tended to deny *an existing debt*; thus, under this plea, the defendant might give in evidence a release, satisfaction, &c., and the parties, as in the case of the general issue in *assumpsit*, were liable to be taken by surprise, and find themselves opposed by some unexpected matter of defence or reply, which, from want of timely notice, they were not in a due condition to resist.

42. In actions of debt on simple contract, other than on bills of exchange and promissory notes, the defendant may plead, that "he never was indebted (1) in manner and form as in the plaint alleged," and such plea shall have the same operation as the plea of non-assumpsit in *indebitatus assumpsit;* and all matters in confession and avoidance, shall be pleaded specially, as above directed in actions of assumpsit.

In debt on simple contract, except on bills and notes.

Form of general issue.

Confession and avoidance to be specially pleaded.

43. In other actions of debt, in which the plea of *nil debet* has been hitherto allowed, including those on bills of exchange and promissory notes, the defendant shall deny specifically some particular matter of fact alleged in the plaint, or plead specially, in confession and avoidance.

In other actions of debt, specific denial of some matter of fact, or plead specially.

DETINET

44. The plea of *non detinet* shall operate as a denial of the detention of the goods by the defendant, but not of the plaintiff's property therein; and no other defence than such denial shall be admissable under that plea. (2)

Plea of non detinet, how to operate.

See G. R. H. T. 4 W. 4.

CASE.

45. I.—In actions on the case, the plea of not guilty shall operate as a denial only of the breach of duty or wrongful act alleged to have been committed by the defendant, and not of the fact stated in the inducement, and no other defence than such denial shall be admissable under

In case,

Plea of *not guilty*, how to operate.

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(1) A plea of the general issue in debt, on simple contract, must be in the form given by this rule, and therefore a plea that the defendant "*never did owe*" was held bad on special demurrer, the form being "*never was indebted.*" Smedley *v.* Joyce, 4 Dowl. 421. A plea that a defendant "*never did promise,*" is a nullity in an action of debt. King *v.* Myers, 5 Dowl 686. As to pleadings in debt, see Green *v.* Marsh, 5 Dowl. 669, and Tidd new Prac. 357 to 362.

(2) Before this rule the defendant might, under this plea, not only have denied that he *detained* the goods, but also have denied that the goods so detained *were the property of the plaintiff.* See Anderson *v.* Passman, 7 C. & P. 193, also cases in Tidd new Prac. 364.

See G. R. H. T. 4 W. 4.

that plea; all other pleas in denial, shall take issue on some particular matter of fact alleged in the plaint. (1)

Instances.

Ex. gr. In an action on the case for a nuisance to the occupation of a house by carrying on any offensive trade,

Nuisance.

the plea of not guilty will operate as a denial, only that the defendant carried on the alleged trade in such a way as to be a nuisance to the occupation of the house, and will not operate as a denial of the plaintiff's occupation of the house. (2)

Right of way.

In an action on the case for obstructing a *right of way*, such plea will operate as a denial of the obstruction only,

Trover.

and not the plaintiff's right of way; and in an action for *converting* the plaintiff's goods, the conversion only, and not the plaintiff's title to the goods. (3)

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(1) The general issue *not guilty*, is a mere traverse or denial of the facts as alleged, and therefore, on principle, should be applied only to cases in which the defence rests on such denial, but here a relaxation had taken place similar to that which prevailed in actions of assumpsit; for, under this plea, a defendant was (prior to these rules) permitted, not only to contest the truth of the *declaration*, but to prove any matter of defence that tended to shew the defendant had no right of action, though such matters were *in confession and avoidance* of the declaration, as, for example, a release given or satisfaction made. This important inroad on the ancient mode of pleading, is no longer allowed. Steph. Pl. 183. In case for *seduction*, the defendant may prove, under the general issue, that the girl was not living with the plaintiff as his servant. Holloway *v.* Abell, 7 C. & P 528.

(2) In an action on the case, the defendant cannot now, under the plea of "not guilty," raise any objection as to defective proof of the inducement in the declaration. Dukes *v.* Gostling, 3 Dowl. 619. But, under the general issue, the plaintiff must not only prove the existence of the nuisance, but that the defendant was the person who caused it. Dawson *v.* Moore, 7 C. & P. 25. But in a case for the wrongful diversion of water, the plea of "not guilty," only puts in issue the diversion, and not its wrongful character, therefore, where the fact of the diversion was proved, but the plaintiff failed to show his right to the water, the Court ordered the verdict which had been entered for the defendant, on the issue of not guilty, to be set aside and a verdict to be entered for the plaintiff, but without damages. Frankum *v.* Earl of Falmouth, 2 A. & E. 452, see also cases collected in Tidd new Prac. 365, and Chitt. Arch. Prac. 335.

(3) The intention of this rule was to confine the operation of the plea of not guilty, to a denial of the *fact* of conversion only, and not to allow the defendant to give evidence of its *legality*, any more than on a plea of not guilty, to an action, or the case for obstructing a right way, the defendant could be allowed to show that the obstruction was lawful or under the like plea to an action for diverting a water-course, to give evidence that such diversion was justifiable by license or prescription. Stanchffe *v.* Hardwick, 3 Dowl. 762, *per Parke* B. Tidd new Prac 367.

In an action of *slander* of the plaintiff in his office, profession, or trade, the plea of not guilty will operate to the same extent, precisely, as at present, in denial of speaking the words, of speaking them maliciously, and in the sense imputed, and with reference to the plaintiff's office, profession, or trade, but it will not operate as a denial of the fact of the plaintiff holding the office or being of the profession or trade alleged. (1) Slander.

In actions for an *escape*, it will operate as a denial of the neglect or default of the Sheriff or his officers, but not of the debt, judgment, or preliminary proceedings. (2) Escape.

In this form of action against a *carrier*, the plea of not guilty will operate as a denial of the loss or damage, but not of the receipt of the goods by the defendant as a carrier for hire, or of the purpose for which they were received. Carriers.

46. All matters in confession and avoidance, shall be pleaded specially, as in actions of assumpsit. Matters in confession and avoidance to be specially pleaded.

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(1) This rule appears to leave to the plea of "*not guilty*," in an action of slander, nearly the same effect that it possessed before, with the exception that, under the new rule, it is an admission of the inducement. In other respects, a justification must still be pleaded, in cases in which it was formerly necessary to plead it. And the defendant may still, under the plea of not guilty, give the like evidence as formerly, to shew that the words were not spoken in malice. In short, not only the sense and application of the words, as that they related to the plaintiff, but also the malicious sense, as that they were spoken in a defamatory spirit, may still be controverted under the general issue. But any facts stated as matter of inducement, and necessary to be proved, in order to render words actionable, as being spoken with reference to those facts, must now be directly denied, and will not be put in issue by the general plea of not guilty. Tidd new Prac. 371. In an action for maliciously indicting the plaintiff without probable cause, the defendant may give evidence of probable cause under the general issue, and if, in addition to the plea of not guilty, he pleads specially that he had probable cause, the Court will order such plea to be struck out. Cotton *v.* Browne, 3 Ad. & Ell. 312. In an action for a *libel*, the defence that the words used were a privileged communication may be given in evidence under the general issue. Lillie *v.* Price, 5 Dowl. 432, I. Nev. & P. 16. S. C. In an action of libel the defendant may, under the general issue, shew in mitigation, that he was provoked to issue the libel by publications of the plaintiff reflecting on him. Watts *v.* Fraser, 7 Ad. & Ell. 223.

(2) In case against the Sheriff for a false return to a fi. fa. the plea of not guilty puts in issue, only the fact of the Sheriff having the money in his hands and making the return alleged, and it is not competent to him, under that plea, to set up a defence of the Bankruptcy of the debtor before the execution of the writ. Wright *v.* Lainson, 2 M. & W. 739.

TRESPASS.

In trespass *qua. clau. fre.* the close to be described, and how, G. R. H. T. 4 W. 4.

47. In actions of trespass *quare clausum fregit*, the close or place in which, &c. must be designated in the plaint by name or abuttals, or other description, in failure whereof the defendant may demur specially. (1)

How plea therein of not guilty, to operate.

48. In actions of trespass *quare clausum fregit*, the plea of not guilty shall operate as a denial that the defendant committed the trespass alleged in the place mentioned, but not as a denial of the plaintiff's possession or right of possession of that place, which, if intended to be denied, must be traversed specially. (2)

In trespass *de bonis asportatis*, how not guilty to operate.

49. In action of *trespass de bonis asportatis*, the plea of not guilty shall operate as a denial of the defendant having committed the trespass alleged, by taking or damaging the goods mentioned, but not of the plaintiff's property therein. (3)

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(1) The object of this rule, seems to be, not only to abolish the common bar or plea of *liberum tenementum*, but also the new assignment consequent thereon; and also to take away any necessity for a new assignment in many other cases, as on pleas of right of common, license, easements, &c. Chitt. Gen. Prac. 3 vol. 471, *3d Rep. Com. Law. Com.* 55. It is provided in Plea Rule 26, Clarke's ed. "that in all plaints for breaking and entering the plaintiff's close, to prevent the use and necessity of a common bar and new assignment, the place where the trespass was committed, *be mentioned precisely and certainly*." The rule of the King's Bench of the third term 1654, is as follows :—"For the avoiding of the common bar and new assignment, the declaration upon an original quare clausum fregit *may* mention the place certainly, and so prevent the use and necessity of the common bar and new assignment." Now, the place *must* be designated, or the defendant may *demur* specially.

(2) Prior to this and the following rule, the defendant, under the general issue, might shew that he did not in fact break or enter the close or take the goods, or he might shew, if he *did* break and enter the close, it was not in the plaintiff's possession, or not *lawfully in his possession*, as against the better title of the defendant, or he might shew if he did take the goods, that they did not belong to the plaintiff, but to any other kinds of defence the general issue was not applicable, see *3d Rep. Com. Law. Com.* 54, 55, reasons for these rules. Now, the defendant must deny the plaintiff's possession of the *locus in quo*, or, that it is the close of the plaintiff, if necessary for his defence. Hughes *v.* Hughes, 1 Tyr & G. 4. 4 Dowl. 532 S. C.; or he must set up a right to the possession or other matter, in justification or excuse, Co. Litt. 282. Pearcy *v.* Walter, 6 C. & P. 232. See Heath *v.* Milward, 2 Bing. N. S. 98. Smith *v.* Edwards, 1. Har. & W. 497. 4 Dowl. 621. S. C.

(3) In *trespass* for taking goods in the possession and apparent ownership of the plaintiff, the defendant cannot set up the title of a third person to defeat

50. Where, in an action of trespass, *quare clausum fregit*, the defendant pleads a *right of way* with carriages and cattle, and on foot in the same plea, and issue is taken thereon, the plea shall be taken distributively; and if a right of way with cattle or on foot only, shall be found by the Court, a verdict shall pass for the defendant in respect of such of the trespasses proved as shall be justified by the right of way so found, and for the plaintiff in respect of such of the trespasses as shall not be so justified. (1)

In trespass *qua. clau. fre* Plea of right of way, with carriages and on foot, to be taken distributively.

51. And where, in an action of trespass *quare clausum fregit*, the defendant pleads a *right of common* of pasture for divers kinds of cattle; *ex. gr.* horses, sheep, oxen, and cows, and issue is taken thereon, if a right of common for some particular kind of commonable cattle only be found by the Court, a verdict shall pass for the defendant, in respect of such of the trespasses proved, as shall be justified by the right of common so found, and for the plaintiff in respect of the trespasses, which shall not be so justified.

And where plea of common of pasture, for divers cattle.

52 And in all actions in which such right of way or common as aforesaid, or other similar right, is so pleaded that the allegations as to the extent of the right are capable of being construed distributively, they shall be taken distributively.

Allegations, in two last pleas, to be taken distributively.

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the action, for it would lead to great confusion if a defendant were allowed to set up the title of others to goods which were not his own. Nelson *v.* Cherrill, 8 Bing. 316.

(1) Where a justification is pleaded, it often runs to a great length and consists of several pleas; the defendant was formerly held liable to prove his right strictly in the very manner and to the very extent alleged, and, therefore, it was necessary for him to vary his pleas, in order that, if he fail in one he may have a chance of succeeding in another; this rule, directing that the plea shall not be taken as entire, but distributively, will release the defendant in most cases from the necessity of pleading several pleas in justification in actions of trespass to real property. See 3*d Rep. Com Law. Com.* 56; see Knight *v.* Woore, 3 Bing. N S. 3. S. C. 3 Dowl. 201 Upon a plea of a right of way to fetch water and goods from a river, the jury having found the right to fetch goods, the Court ordered judgment to be entered for the defendant as to the right to fetch water, and for the plaintiff as to the right to fetch goods. So, in *trespass* and *assault*, if the defendant justify more assaults than are charged in the declaration, he will not be required to prove the whole of his justification. Atkinson *v.* Warne, 3 Dowl. 483.

These restrictions not to extend to cases where general issue allowed by statute.

See 3 & 4 W. 4. c. 42. § 1.

53. That no rule or order shall have the effect of depriving any person or persons of the power of pleading the general issue, and giving the special matter in evidence in any case, wherein he is now or hereafter shall be entitled to do so by virtue of any act of Parliament, now or hereafter to be in force. (1)

DEMURRERS.

Demurrer to shew in margin some matter of law intended to be argued, or may be set aside as irregular.

54. In the margin of every demurrer, before it is signed by counsel, some matter of law intended to be argued, shall be stated; and if any demurrer shall be delivered without such statement, or with a frivolous statement, it may be set aside as irregular by the Court or a Judge, and leave may be given to sign judgment as for want of a plea. (2)

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(1) Regularly by the common law, when a man doth any thing by a warrant or authority, he must plead it specially. See Co. Litt. 283, Tidd Prac. 9th ed. 652. In order to protect officers in the execution of their duty, and to prevent the prolixity, difficulty, and expence of special pleading, they are in many cases allowed by statute to plead the general issue and give the special matter in evidence. The 3 & 4 W. 4. c. 42. § 1, provides, that no rule or order made under the provisions of that act, "shall have the effect of depriving any person "of the power of pleading the general issue and giving the special matter in "evidence in any case wherein he is now, or hereafter shall be entitled to do "so by virtue of any act of Parliament now, or hereafter to be in force." The Judges have framed this rule nearly in the words of the statute. There are several statutes in force in India, under which defendants in certain actions are entitled to plead the general issue and give the special matter in evidence. A special plea of justification, besides the general issue, will not now be allowed where the special matter may, by statute, be given in evidence under the latter plea. Neale *v.* M'Kenzie, 2 Dowl. 702.

(2) This rule is particularly salutary for the prevention of delay, by compelling the party demurring to *point out, in the margin of his demurrer, some point* on which he intends to rely in support of his demurrer; and if such marginal note be omitted, or if the objection be frivolous, i. e. *manifestly untenable* the Court, or even a single Judge, may, in term, or *vacation*, give leave to sign judgment as for want of a plea. This rule is said to have put an end, in a great measure, to sham or unfounded demurrers. See the following decisions on the word "*frivolous*" in this rule. Cresswell *v.* Crisp, 2 Dowl. 635. Tyndall *v.* Ulleshorne, 3 Dowl. 2. Lyons *v.* Cohen, 3 Dowl. 243. Abbott *v.* Arlett, 4 Dowl. 759, and Owen *v.* Walters, 5 Dowl. 324. The omission of the marginal statement is no objection to the demurrer being argued; the effect of the rule is

Provided, that the party demurring may, at the time of the argument, insist upon any further matters of law, of which notice shall have been given to the Court.

Proviso. See G. R. H. T. 4 W 4.

55. No rule for joinder in demurrer shall be required, but the party demurring may demand a joinder in demurrer, and the opposite party shall be bound, within four days after such demand, to deliver the same, otherwise judgment.

No rule to join, but demand of joinder in demurrer in four days, otherwise judgment.

56. To a joinder in demurrer no signature of counsel shall be necessary, nor any fee allowed in respect thereof.

Joinder not to be signed by counsel.

57. Four clear days before the day appointed for the argument, the plaintiff shall deliver a copy of the demurrer book, special case, or special verdict, to the Chief Justice, and the defendant shall deliver copies to the other two Judges of the Court; and, in default thereof, by either party, the other party may, on the day following, deliver such copies as ought to have been so delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies, or deposited with the Clerk of the papers a sufficient sum to pay for such copies. (1)

Four days before argument, plaintiffs to deliver copy of demurrer book to the C J and defendants copies to other Judges.

On default by either, the other may deliver and entitled to costs thereof.

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that such a demurrer may be set aside as irregular. Lacey *v.* Umbers, 3 Dowl. 732. As to demurrer books, see Fisher *v.* Snow, 3 Dowl. 27. Fergusson *v.* Mitchell, 4 Dowl. 513. Where a defendant demurs to any pleading of the plaintiff, and the Court overrules the demurrer, the defendant is not at liberty to object to any of the previous pleadings of the plaintiff, unless the objection is stated in the margin of the paper books. Darling *v.* Gurney, 2 Dowl. 101 There is an express rule to this effect in the K. B. by the practice of which Court the Supreme Court here is, by the 13th miscellaneous plea rule, to be guided in cases not otherwise specially provided for A reference in the margin of a demurrer to the causes specially set out, is a sufficient compliance with this rule. Berridge *v.* Priestly, 5 Dowl. 306. A statement in the margin of a demurrer to a plea, that the matters disclosed in the plea, contain no answer to the declaration, held insufficient. Ross *v.* Robeson, 3 Dowl. 779. It is sufficient to specify several grounds of demurrer in the *margin*, without specifying on which the defendant intends to rely. Whitmore *v.* Nicholls, 5 Dowl. 521. This rule applies as well to special as general demurrers Lyndhurst *v.* Pound, 5 Dowl. 459.

(1) If a party seeks to make his opponent pay the costs of copies of demurrer books, pursuant to this rule, he must deliver them on the day after the time for his opponent's delivering them expires Fisher *v.* Snow, 3 Dowl. 27. As to delivery of paper books, see Darker *v.* Darker, 2 Dowl. 88; Abraham *v.* Cook, Dowl. 215.

58. The form of a demurrer to be as follows:

Form of demurrer,

"The said defendant, by ———, his attorney (or in person, &c. or plaintiff,) says, that the plaint, (or plea, &c.) is not sufficient in law;" shewing the special causes of demurrer, if any.

and of joinder.

The form of a joinder in demurrer shall be as follows:

"The said plaintiff (or defendant) says, that the plaint (or plea, &c.) is sufficient in law."

EVIDENCE.

Admission of documents, when and how to be required &c.

59. Either party, after plea pleaded, and *a reasonable time* before trial, may give notice to the other, in the form annexed to this rule, or to the like effect, of his intention to adduce, in evidence, certain written or printed documents; and, unless the adverse party shall consent by indorsement on such notice, to make the admission specified, the party requiring such admission, may call on the party required, by *summons*, to shew cause before a Judge, why he should not consent to admission, or, in case of refusal, be subject to pay the costs of proof. And unless the party required shall expressly consent to make such admission, the Judge shall, if he think the application reasonable, make an order that the costs of proving any document specified in the notice, which shall be proved at the trial to the satisfaction of the Court, certified by the Prothonotary's indorsement thereon, shall be paid by the party so required, whatever may be the result of the cause. (1)

Unless party consent to admit, the Judge may order him to pay costs of proof.

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(1) The Court has not jurisdiction under this rule, to order the admission of documents; but, if a Judge at chambers desires parties, coming before him under this rule, to go before the Court, they will be heard, but the Court will pronounce no judgment, leaving that to be done by the Judge at chambers, Smith *v.* Bird, 3 Dowl. 641. See form of order same case 645; and see Wordsworth's Rules of Court, 169, &c. Where notice to admit documents on a trial has been given pursuant to this rule, and admission refused, and a Judge's order thereupon made according to this rule for costs, in case the documents are proved to the satisfaction of the Court certified by the Prothonotary's indorsement thereon—the party adducing them is entitled to his costs of the proof, although, after trial, the verdict is set aside, and a new trial granted without costs, and before the second trial the documents are admitted. Lewis *v.* Howell, 6 Ad. & Ell. 769.

Provided, that if the Judge shall think the application unreasonable, he shall indorse the summons accordingly.

If unreasonable, Judge to indorse same on summons

Provided also, that the Judge may give such *time for inquiry* or examination of the documents intended to be offered in evidence, and give such directions for inspection and examination, and impose such terms upon the party requiring the admission, as he shall think fit.

Judge may give time & impose terms.

If the party required shall consent to the admission, the Judge shall order the same to be made.

If consent, order thereon.

No costs of proving any written or printed documents, shall be allowed to any party who shall have adduced the same in evidence on any trial, unless he shall have given such notice as aforesaid, and the adverse party shall have refused or neglected to make such admission, or the Judge shall have indorsed upon the summons that he does not think it reasonable to require it.

No costs of proving documents, unless notice and refusal or indorsement of unreasonableness.

A Judge may make such order as he may think fit, respecting the *costs of the application*, and the costs of the production and inspection, and in the absence of a special order, the same shall be costs in the cause.

Costs discretionary in the Judge, otherwise costs in cause

See G R H. T. 4 W. 4

Form of notice referred to.

In the Supreme Court, &c.

A. B. *v.* C. D.

Take notice, that the { Plaintiff / Defendant } in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the { Defendant / Plaintiff } his attorney, or agent at ——, on —— between the hours of ——; and that the { Defendant / Plaintiff } will be required to admit that such of the said documents as are specified to be originals, were respectively written, signed, or executed, as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively;

saving all just exceptions to the admissibility of all such documents as evidence in this cause. Dated, &c.

To E. F. Attorney for { Defendant / Plaintiff.

G. H. Attorney for { Plaintiff / Defendant.

[*Here describe the documents, the manner of doing which may be as follows:*]

ORIGINALS.

Description of Documents.	*Date.*
Deed of covenant between A. B. and C. D. first part; and E. F. second part.	1st January 1828.
Indenture of lease from A. B. to C. D...	1st February 1828.
Indenture of release between A. B. C. D. first part, &c.	2d February 1828.
Letter, Defendant to Plaintiff, ...	1st March 1828.
Policy of Assurance on goods by ship *Isabella*, on voyage from Calcutta to London.....	3d December 1827.
Memorandum of agreement between C. D. Captain of said ship, and E. F....	1st January 1828.
Bill of Exchange for 1,000 Rs. at 3 months, drawn by A. B. on and accepted by C. D. indorsed by E. F. & G. H.	1st May 1829.

COPIES.

Description of Documents.	*Date.*	*Original or duplicate served, sent, or delivered, when, how, and by whom.*
Register of baptism of A. B. at, &c.....	1st Jan. 1808.	
Letter, Plaintiff to Defendant..	1st Feb. 1828.	Sent by General Post 2d February 1828.
Notice to produce papers.....	1st Mar. 1828	Served 2d March 1828, on deft.'s attorney, by E. F. of—
Record of judgment of the Supreme Court, in an action J. S. *v.* J. N.	1st Term, 1835.	
Charter of the Bank of Bengal.	date of	

BAIL-BOND AND BAIL.

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1. That if any person shall be arrested by any writ or process issuing out of this Court, at the suit of any common person, and the Sheriff or other officer take bail for such person against whom such writ or process is taken out, the Sheriff or other officer, at the request and costs of the plaintiff in such action or suit, or his lawful attorney, shall indorse on the bail-bond, or other security taken from such bail, a consent in writing that the plaintiff in such action may sue and recover the same in the name of the said Sheriff or other officer to the use of the said plaintiff, and the said Sheriff or other officer shall also attest the said consent under his hand and seal, in the presence of two or more credible witnesses; and if the said bail-bond or other security taken from bail be forfeited, the plaintiff in such action, after such consent had, may file a plaint in this Court, in the name of the said Sheriff or other officer, and prosecute the same for his own use, and the said Sheriff and other officer shall not release the said bond, or do any act whatsoever to prevent the plaintiff from recovering in the said plaint; and the said bond and action brought thereon, and the original action shall be subject to such rule or rules of this Court, as shall be made for such relief to the plaintiff and defendant in the original action, and to the bail upon the said bond or other security taken from such bail, as is agreeable to justice and reason, and such rule or rules shall have the nature and effect of a defeasance to such bond or other security taken from such bail.

How the Sheriff is to assign the bail-bond to plaintiff.

Proceeding on bail-bond.

See former Pl. R. 52.

2. That where any inhabitant of India not subject to the jurisdiction of this Court shall offer to become surety to the Sheriff for any defendant or defendants arrested in any suit or action commenced in this Court, or for any plaintiff in replevin, the Sheriff shall not accept of such surety, unless he will agree that the penalty of the bond shall be taken in a sum exceeding five hundred current rupees, and that, in such obligation, there shall be inserted an agreement that the penal sum mentioned therein, when forfeited,

A jurisdiction clause to be inserted in all bail-bonds, recognizances,&c when entered into by any inhabitant of India not subject to the jurisdiction of the Court.

may be sued for and recovered in this Court; and that where any person not subject to the jurisdiction of this Court shall enter into any recognizance in this Court, or give any bond or other security, either by direction of this Court, or to any Judge or officer thereof, acting in his office, the same shall be taken in a sum exceeding five hundred current rupees, and the officer or clerk who shall take such recognizance, bond, or other security, shall demand of the person entering into or giving the same, his consent, that the said recognizance, bond, or other security if there shall at any time be just cause to put the same in suit, may be prosecuted in this Court, and such person shall likewise undertake, that in such case he will not plead to the jurisdiction of the Court, and the said officer or clerk shall immediately and in his presence reduce such consent and undertaking into writing, which shall, at the same time, be signed by the person so consenting and undertaking.

See former Pl. R. 53.

In arrests on *mesne process* ten miles from Calcutta, where the party arrested is unable to deposit money or to give bail, the Sheriff may keep the party in custody for a reasonable time at the place where arrested.

3. In all cases in which the Sheriff shall arrest any person upon *mesne process* ten miles beyond the limits of Calcutta, if the party so arrested shall not deposit in the hands of the Sheriff, the sum indorsed upon the writ, by virtue of the affidavit to hold to bail in that action, and is unable to give bail, then, instead of bringing the party forthwith to Calcutta, it shall be lawful for the Sheriff, upon the request of the party, to detain him in custody at the place where he shall have been arrested, or at some convenient place in the neighbourhood, for such time as may be necessary or reasonable to enable the party to obtain bail, or to communicate with Calcutta.

See former Pl. R. 121, of 1829.

Where bail-bond security, plaintiff may sign judgment.

4. In all cases where the bail-bond shall be directed to stand as a security, the plaintiff shall be at liberty to sign judgment upon it. (1)

See G. R. 29. H. T. 2 W. 4.

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(1) If proceedings upon a bail bond be stayed upon the terms of the bail-bond standing as a security, the bail-bond will be like a *cognovit* by the bail, defeasible, upon the payment of the debt and costs, if any, by the original defendant. Jervis's Rules, 63. As to bail-bond standing as security, see Hodge *v.* Hopkins, 1 Dowl. 431. Ditchett *v.* Tollett, 3 Price, 257. A bail-bond executed by one only of the bail, may be ordered to stand as a security, Rex *v.* Sheriff of London, 9 Moore, 422, 2 Bing. 227, S C.; see also Call *v.* Thelwell, 1 C. M. & R. 780 3 Dowl. 443. S. C. Staines *v.* Stoneham, 2 C M. & R. 658, 4 Dowl. 678, S.C. and see as to terms on losing a trial, 3 Dowl. 194, 4 Dowl. 142, 709. 5 Dowl. 566.

5. Proceedings on the bail-bond may be stayed on payment of costs in one action, unless sufficient reason be shewn for proceeding in more. (1)

Proceedings thereon when to be stayed.
See G. R. 30. H. T. 2 W. 4.

BAIL.

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6. That where any defendant shall be arrested by virtue of any process directed out of this Court, in which a clause shall be inserted, authorizing the Sheriff to take bail, and such defendant shall have entered into a bail-bond to the Sheriff, no proceedings shall be had on the said bond at the suit of the plaintiff, until eight days after the execution of any process, when the defendant shall be arrested in the town of Calcutta, or within ten miles thereof, or, if arrested at a greater distance, until such time, as the Court or a Judge, shall have directed special bail to be put in, shall have expired.

When arrest in Calcutta or within ten miles no proceedings on bail-bond for eight days.
If at greater distance, not until time allowed for putting in special bail shall have expired.
See former Pl. R. 54.

7. That the defendant, after putting in special bail before a Judge of this Court, shall immediately give notice to the plaintiff, that he has put in bail, and before what Judge, and also of the name, additions, and places of abode of such bail, and shall also enter in a book, to be kept for that purpose by the clerk of the Judge before whom the said bail shall have been put in, the names of the defendant and his bail, and of the plaintiff, as they shall be in the bail-piece, and the name of the attorney for the defendant, if the defendant shall employ an attorney, and if the plaintiff is satisfied with such bail, he shall make an entry in the said book that he is satisfied. And if the plaintiff be not satisfied with such bail, then the plaintiff shall, within twelve days after such bail has been put in, and notice thereof given, enter an exception in the said book to such bail, and give immediate notice thereof to the defendant; and the said bail shall, in such case, within

How notice of bail is to be given,
how to be accepted,
and excepted to.
When to justify.

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(1) See the necessity for this rule, Key *v.* Hill, 2 Barn. & Ald. 598. Where several actions are brought on the same bail bond it is too late, after verdict, to move to stay proceedings on payment of the costs of one action only. Johnson *v.* Macdonald, 2 Dowl. 44.

four days after such exception and notice, justify, themselves in open Court, if in term or if in vacation, before a Judge at Chambers.

See former Pl. R. 54.

Bail not justifying within time prescribed, new bail to be put in, &c.

8. That if the bail or either of them do not justify within the time prescribed by the above rule, then the defendant shall put in other bail, who shall justify within such time, and in such manner as is before required in the room of such person or persons before put in as bail.

See former Pl. R. 54.

When bail excepted to, the defendant how to proceed.

9. That in every case where the plaintiff has excepted to the bail, and given notice thereof, the defendant shall give two days' notice, in writing, to the plaintiff before bail shall justify, on what day the bail will justify, and at the time of giving such notice to the plaintiff the defendant shall produce to the plaintiff or his attorney the persons of such bail.

See former Pl. R. 54.

Bail not to be changed without leave.

10. That in all cases, the bail of which notice shall have been given, shall not be changed without leave of the Court or a Judge. (1)

See G. R. T. T. 1 W. 4.

Three days notice of justification to be given, when new bail is put in.

11. That in all cases where the bail intended to be put in, or either of them, or other than the bail originally put in, the defendant do give notice to the plaintiff of the name, additions, and places of abode of such person or persons so offering themselves to be bail, and on what day they will justify, at least three days before the day, and at the time of giving such notice to the plaintiff, defendant shall produce to the plaintiff or his attorney, the persons of such bail.

See former Pl. R. 54.

Defendant may justify bail when put in, upon giving four days' notice to the plaintiff. Plaintiff upon giving one day's notice may obtain time to inquire after bail.

12. That the defendant may justify bail at the same time at which they are put in, upon giving four day's notice, for that purpose, and that the defendant, at the time of giving such notice, produce to the plaintiff or his attorney the persons of such bail; and if the plaintiff is desirous of time to inquire after the bail, and shall give

(1) The object of this rule was to secure good bail in the first instance, and the Court will not allow the bail to be changed without a sufficient reason being assigned, and then only upon payment of costs, and putting the plaintiff in the same situation. See Jervis's Rules, 33; and see Wordsworth's Rules, 27, n (*p*).

one day's notice thereof to the defendant, or his attorney, before the time appointed for justification, stating therein what further time is required such time not to exceed three days, then, (unless the Court or Judge shall otherwise order) the time for putting in and justifying bail shall be postponed accordingly, and all proceedings shall be stayed in the mean time.

See G. R. T. T. 1 W. 4.

13. That if the notice of bail shall be accompanied by an affidavit, or solemn affirmation, of each of the bail, according to the form hereto subjoined, and if the plaintiff afterwards except to such bail, he shall, if such bail are allowed, pay the costs of justification; and, if such bail are rejected, the defendant shall pay the costs of opposition, unless the Court or a Judge thereof, shall otherwise order. (1)

Where affidavit accompanies notice and plaintiff except, he shall pay costs if bail justify; if rejected, defendant to pay costs, unless otherwise ordered.

See G. R. T. T. 1 W. 4.

FORM OF AFFIDAVIT OR AFFIRMATION.

IN THE SUPREME COURT, &c.

BETWEEN, &c.

A. B. one of the bail for the abovenamed defendant, maketh oath (*or*, solemnly affirms,) and saith, that he is a merchant (*or*, householder) residing in the town of Calcutta; [*describing particularly the street or place and number, if any*]—that he is worth, (2) the amount of Co.'s Rs. ——, [*the amount required by the practice of the Court*] over and above all his just debts, [*if bail*

Form of the affidavit, or affirmation, of justification.

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(1) Each of the bail must make a separate affidavit or affirmation, and copies must be furnished to the plaintiff's attorney, with the notice of bail. Jervis's Rules, 32, but see 1 Dowl. 115. The words "*solemn affirmation*" are not in the rule from which this is taken, but seem to have been introduced here to meet the objection which many respectable natives have to become bail, because they are obliged to *swear* to the value of their property.

(2) The word "*worth*" is introduced in this affidavit in conformity with the provision of G. R. 19. H. T. 2 W. 4.

He's possessed, &c. instead of *He is* possessed, held sufficient. *Lanyon's Bail*, 3 Dowl. 85. The affidavit should agree with the form; it is not sufficient that it is equivalent, 2 Dowl. 19, and see Wordsworth's Rules 23, 36, &c.

in any other action, add " and every other sum for which he is now bail,"] that he is not bail for any defendant except in this action [or, *if bail in any other action or actions, add* " except for C. D. at the suit of E. F. in the Court of ———, in the sum of Co.'s Rs. ——; for G. H. at the suit of J. K. in the Court of ———, in the sum of Co.'s Rs. ——;" *specifying the several actions, with the Courts in which they are brought, and the sums in which the deponent is bail*]; that the deponent's property, to the amount of the said sum of Co.'s Rs. ——, [and, *if bail in any other action or actions,* " of all other sums for which he is now bail, as aforesaid,"] consists of [*here specify the nature and value of the property in respect of which the bail proposes to justify as follows:*—" stock-in-trade, in his business of ———, carried on by him at ———, of the value of Co.'s Rs. ——; of good book debts owing to him to the amount of Co.'s Rs. ——; of furniture in his house at ———, of the value of Co.'s Rs. ——; of a freehold or leasehold interest in land, of the value of Co.'s Rs. ——, situated at ———, occupied by ———, or of a dwelling house of the value of Co.'s Rs. ——, situated at ———, occupied by ———," *or of other property, particularising each description of property, with the value thereof*]; and that the deponent hath for the last six months resided at ———, [*describing the place or places of such residence.*]

Sworn, &c.

If one day's notice of exception not given, recognizance may be taken out of Court, &c. See G. R. 1 W. 4.

14. That if the plaintiff shall not give one day's notice of exception to the bail, by whom such affidavit or solemn affirmation shall have been made, the recognizance may be taken out of Court, without other justification, than such affidavit, or solemn affirmation.

If plaintiff shall not exceptwithin time required, afterwards to be of no effect See former Pl. R. 54. See G R H T 2 W 4.

15. If the plaintiff or his attorney, after notice of bail having been put in, as is before required, in such cases, by the foregoing bail rules, and within the time required by the said rules after the entry of such bail, shall not enter an exception in the said book, then no exception, afterwards made to the said bail, shall be of any force or effect.

16. When bail to the Sheriff become bail to the action, the plaintiff may except to them, though he has taken an assignment of the bail-bond. (1)

Bail to Sheriff becoming bail above may be excepted to after assignment.

17. That every bail-piece, taken and acknowledged in this Court or before any Judge thereof, shall be fairly drawn and engrossed on parchment in the form following:

Form of bail-piece.

Fort William in Bengal, { Capias against A. B. of Calcutta at Fort William aforesaid, at suit of C. D. for Co.'s Rs. upon promise

Bail as by order. Co 's Rs.
Bail E. F of, &c. &c.
G J of, &c. &c.
Each of the bail in Co.'s Rs.

Taken and acknowledged the day of

J K. *Attorney for Defendant*

Before me

And if such bail-piece be taken and acknowledged in open Court, then the Prothonotary shall subscribe at the bottom thereof, the day of the month when taken; and these words "by the Court:" and if the bail-piece be taken and acknowledged before the Chief Justice, or other Justice out of Court, the day of the month shall be subscribed at the bottom thereof, as also these words, "taken and acknowledged before me;" and the Chief Justice or other Justice shall sign his name thereto; and in taking all recognizances from bail to the action, these or words to the like effect shall be used, "You (calling the bail by their names) do jointly and severally undertake, that if the defendant (naming his name) shall be condemned in this action at the suit of the said plaintiff, (naming his name) he shall satisfy the costs and condemnation money, or render himself into the custody of the Sheriff, or you will pay the

Bail-piece, if taken in Court, how to be subscribed.

How, if before a Judge

Form of taking recognizances.

(1) In K B no exception could be taken after assignment of bail-bond In C. P exception might be taken; this is now the rule of both Courts G. R. H.T. 2 W. 4.

Defendant to deposit Prothonotary's fee for filing with the Judge's Clerk.

costs and condemnation money for him;" and the defendant or his attorney shall deposit in the hands of the clerk of the Judge before whom any bail shall be put in, the fee due to the Prothonotary for filing the bail-piece; and, in case the plaintiff or his attorney make an entry in the said book, that he is satisfied with the bail, or, shall not have entered any exception thereunto within the time required by the foregoing bail rules, and affidavit be made of the service of notice of bail as is before required, or, if the bail shall have justified before a Judge of this Court as aforesaid, the clerk of such Judge shall immediately deliver the bail-piece to the Prothonotary, who shall immediately sign and file the same; and, in case such bail shall justify themselves in open Court, such clerk shall, before the day of such justification, deliver the bail-piece to the Prothonotary, and that the said clerk shall, at the time he shall deliver the bail-piece, pay the Prothonotary the fee aforesaid.

Where bail accepted, or no exception entered, and affidavit of notice, or if bail justified before Judge, Clerk to deliver bail piece to the Prothonotary to be filed,

if bail justify in Court to deliver same to Prothonotary and pay his fee.

See former Pl. R 54

When bail-piece filed, in term or vacation, plaintiff may obtain rule to plead, or may enter rule, *de bene esse*, before bail-piece filed

18. That in all cases where the bail-piece shall have been signed and filed, whether in term or vacation, the plaintiff or his attorney may enter a rule with the clerk of the papers for the defendant to plead, and the defendant shall, within four days after serving of such rule, plead accordingly, or, may enter a rule with the said clerk, *de bene esse*, to plead, before such bail-piece be filed; and such defendant shall, if served therewith four days before filing the said bail-piece, plead on the day on which the same shall be filed, and if not served four days before the filing thereof, then within four days of the service of such last mentioned rule.

When defendant to plead.

See former Pl. R. 54.

Where defendant arrested and in custody, to enter names, &c. of bail proposed to be put in, six days before put in, and give immediate notice to plaintiff, &c.

19 That when any defendant, who has been arrested, shall not have given a bail-bond, and shall be in custody therefore, he shall not be delivered to bail, unless he shall enter the names of such persons as he proposes to put in as bail, as aforesaid, together with their additions and places of abode, and the day on which such bail are to be put in, at least six days before the day mentioned for putting in the same, and shall give immediate notice in writing to the plaintiff or his attorney of such entry, and the names, additions, and places of abode of such persons

so intended to be put in, and shall also produce the persons of such bail as aforesaid.

See former Pl. R. 54.

20. That no habeas corpus, to bring up such prisoner to be bailed, be granted, until affidavit made of the due service of such notice on the plaintiff or his attorney, and of the bail's having been produced, as aforesaid; and that the same rule and order be taken as to proceeding in relation to such bail as is before directed, in case where a bail-bond has been given to the Sheriff.

Hab. corp. to bring up prisoner to be bailed, not to issue without affidavit of notice required by preceding rule.
See former Pl. R. 55.

21. That the Prothonotary do keep a book, in which he shall enter, immediately after the filing of any bail-piece, the name of the parties to the cause and of the bail, and the name of the defendant's attorney, and the time at which the said bail was taken.

Prothonotary to enter in a book, names of parties and bail, &c.
See former Pl. R. 56.

22. That no advocate, attorney, or officer of this Court, or Sheriff, or his deputy, or any Sheriff's officer, or any of their clerks, be bail in any action in this Court; and if any such person be put in as bail to the action, except for the purpose of rendering only, the plaintiff may treat the bail as a nullity, and sue upon the bail-bond as soon as the time for putting in special bail has expired, unless good bail in the mean time be duly put in.

No advocate, officer of Court, &c. to be bail. If put in except for rendering only, the bail may be treated as a nullity.
See former Pl. R. 57.

23. Bail, though rejected, shall be allowed to render the principal, without entering into a fresh recognizance. (1)

Bail, though rejected, may render.
See G. R. H T. 2 W. 4.

24. Bail shall only be liable to the sum sworn to by the affidavit of debt, and the costs of suit, not exceeding in the whole the amount of their recognizance. (2)

Bail to what amount liable.
See G. R. H. T. 2 W. 4.

25. That where any defendant shall be surrendered by his bail to be committed to the custody of the Sheriff, such bail shall cause an exoneretur to be entered on the bail-piece by the Prothonotary, and such bail be thereupon

On surrender, bail to cause exoneretur to be entered, and be discharged.

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(1) In the King's Bench rejected bail were capable of rendering so long as their names remained on the bail piece. In the common pleas they could not. See Tidd new Prac 159.

(2) See Tidd Prac. 9th ed. 280. 2 Dowl 767, and 5 Barn & Ad 241.

No sci. fa. against bail, unless 8 days between teste and ret. of ca. sa. Teste of sci fa. not before ret. of ca. sa.
See former Pl. R. 59.

discharged. That no scire facias issue against any bail, unless the capias ad satisfaciendum, which shall have issued against the defendant, shall have at least *eight* days between the teste and return thereof, and that the teste of such scire facias be not before the return of the capias ad satisfaciendum.

No judgment on sci. fa. against bail unless four days between teste and return

When judgment may be entered against bail by default.

26. That no judgment be given on a scire facias against bail, except there shall be at least four days between the teste and return of such writ; that when nihil is returned, a second writ of scire facias, returnable as aforesaid, shall issue; and no judgment shall be entered against bail by default, unless the Sheriff having returned scire feci, the bail shall not appear on the return day of the writ, or unless the Sheriff shall have returned nihil to two writs; and the Sheriff is hereby required, on the receipt of such scire facias, to execute the same with speed and deligence, and to make a return thereof; and that the said bail be at liberty to surrender the defendant before the return day of the said scire facias, or on the return day any time before the rising of the Court, in discharge of their recognizance; and that no plaint of debt be brought against bail upon their recognizance unless there be eight days between the teste and return of the capias ad satisfaciendum against the defendant; and that the writ of summons issued on such plaint, shall not bear teste before the return of such capias ad satisfaciendum, and shall have the same time between the teste and return thereof, as is before required in the case of a scire facias, and the bail shall be at liberty to surrender the defendant in discharge of their recognizance at such time as is allowed in the case of a scire facias.

Bail may surrender defendant before return of sci. fa. or before rising of Court.

No action of debt against bail, unless 8 days between teste and return of ca sa.

Summons against bail not to be tested before return of ca. sa. and returnable as sci. fa.

Bail may render as in case of sci. fa.

See former Pl. R. 60.

Prothonotary to keep a book for entering all renders and all commitments, with a memorandum of the cause, &c.

27. That the Prothonotary do keep a separate book for the purpose of entering therein all surrenders in discharge of bail, and the commitments of defendants so surrendered, and of all persons committed on the plea side of this Court, with a memorandum of the cause of such commitment, and the name of the suit, if such commitment be on account of any matter arising in a cause, and also an alphabetical list of the names of the persons so committed, referring to such memorandums.

See former Pl. R 61.

DEPOSIT OF MONEY.

*1. It is ordered that all persons who shall be arrested upon mesne process, shall be allowed, in lieu of giving bail to the Sheriff, to deposit in the hands of the Sheriff, by delivering to him, or to his under Sheriff, or other officer to be by him appointed for that purpose, the sum indorsed upon the writ, by virtue of the affidavit for holding to bail in that action, together with one hundred rupees in addition to such sum, to answer the costs which may accrue, or be incurred in such action, up to and at the time of the return of the writ; and shall thereupon be discharged from such arrest as to the action in which he, she, or they shall so deposit the sums indorsed on the writ; and that the Sheriff shall, in every such case, at or before the return of the said writ, pay to the clerk of the papers, the sums of money so deposited with him as aforesaid; and thereupon, in case the defendant or defendants shall afterwards duly put in and perfect bail in such action, according to the course and practice of this Court, the sum of money so deposited and paid into Court, shall, by order of the Court, upon motion to be made for that purpose, be repaid to such defendant or defendants; but in case the defendant or defendants shall not duly put in and perfect bail in such action, or proceed as directed in the following rules, then and in such case, the said sum of money so deposited and paid into Court as aforesaid, shall, by order of the Court, upon a like motion to be made for that purpose, be paid over to the plaintiff or plaintiffs in such action, who shall be thereupon authorized to file common bail for such defendant or defendants, if the said plaintiff or plaintiffs shall so think fit; such payment to the plantiff or plaintiffs to be made subject to such deductions, if any, from the sum of one hundred rupees, deposited and paid to answer the costs as aforesaid, as upon the taxation of the plaintiff's costs, as well of the suit as of his application to the Court in that behalf, may be found reasonable.

Persons arrested on mesne process, to be discharged on depositing with Sheriff sum indorsed upon the writ, and 100 Rs to cover costs.

Sheriff to pay same to Clerk of the papers.

If defendant perfect bail, he may receive the same back on motion.

If he do not, or proceed, &c.

Plaintiff may move to have same paid over to him

and may file common bail for defendant.

The 100 Rs. to be subject to reduction on taxation of costs.

See 43 G. 3. c. 46. § 2.

2. That in all cases where, by order of the Court or a Judge, the plaintiff has been allowed to advance money

Where plaintiff is allowed to

advance money for executing process, party arrested to deposit that sum, in addition to sums before mentioned.

See former Pl. R. 120, of 1829, and 7 & 8 G. 4 c. 71.

for the costs of the execution of any mesne process, any person arrested thereon, in order to obtain his discharge from such arrest, shall deposit with the Sheriff, in addition to the sums mentioned in the next foregoing rule, the sum authorized to be advanced, as required to cover the necessary and unavoidable expence, of making the arrest. (1)

Where defendant discharged upon deposit, sum deposited, with 200 Rs. may be paid into Court, as security for costs of action.

3. It is ordered, that in all cases in which any defendant shall have been discharged from arrest upon making such deposit as is required by the last rule, and the sum so deposited shall have been paid into Court, it shall be lawful for such defendant, instead of putting in and perfecting special bail in the action, according to the course and practice of the Court, to allow the sum so deposited with the Sheriff, and by him paid into Court as aforesaid, together with the *additional sum* of two hundred Company's rupees, to be paid into Court by such defendant, as a further security for the costs of the action, to remain in the Court to abide the event of the suit; and in all cases when any defendant shall have been arrested, and shall have given bail to the Sheriff, or shall have been arrested, and remain in custody, it shall be lawful for such last mentioned defendant, instead of putting in and perfecting special bail, to deposit and pay into the said Court, the sum indorsed upon the writ, and the *further sum* of three hundred Company's rupees, as a security for the costs of the action, there to remain to abide the event of the suit; and thereupon the said defendant may, and he is, hereby required, to file common bail in the action within such time as he would have been required, to have put in and perfected special bail in the action, according to the course of the Court; or, in default thereof, the plaintiff in the action is hereby empowered to file such common bail for the said defendant, and the cause may proceed as if the defendant had put in and perfected special bail; and in case judgment in the said action shall be given for the plaintiff, he shall be entitled, by order of the Court, upon motion made for that purpose, to receive the said money remaining in or so deposited or paid into

To abide the event.

When arrested, and gives bail to Sheriff, or remains in custody, may deposit in Court sum indorsed on writ, and 300 Rs. for costs.

And must file common bail within time required for perfecting bail.

In default, plaintiff may file common bail and proceed.

If judgment for plaintiff,

(1) See rule 4, *post*.

the Court as aforesaid, or so much thereof as will be sufficient to satisfy the sum recovered by the judgment and the costs of the application; and if judgment be given in the said action for the defendant, or the plaintiff to discontinue his suit, or be otherwise barred or in case the sum deposited and paid into Court be more than sufficient to satisfy the plaintiff, the said money so deposited or paid into Court, or so much thereof as shall remain, shall, by order of the Court, upon motion to be made for that purpose be repaid to such defendant. (1)

entitled, on motion, to receive deposit, or sufficient to satisfy sum recovered and costs of application.

If judgment for defendant, or action discontinued, &c. deposit or surplus, repaid to defendant.

See 7 & 8 G 4. c. 71.

4. That in all cases where, by order of the Court or a Judge, the plaintiff has been allowed to advance money for the costs of the execution of any mesne process, any person who shall have been arrested thereon, and having given bail to the Sheriff, or remaining in custody, shall be desirous of making a deposit, instead of putting in and perfecting special bail, shall deposit and pay into Court, in addition to the sums mentioned in the next foregoing rule, the sum authorized to be advanced as required to cover the necessary and unavoidable expenses of making the arrest; and also if he shall have been brought to Calcutta after the arrest, the sum authorized to be advanced as necessary for so bringing him to Calcutta.

Where advance allowed for executing process, party arrested, wishing to deposit, to pay into the Court, in addition to above sums, the sums authorized to be advanced for expenses of arrest, &c.

See 7 & 8 G. 4. c. 71.

5. It is ordered that a defendant, who hath made his election, to make such deposit and payment as in the last rules mentioned, at any time in progress of the cause, before issue joined in law or fact, or final or interlocutory judgment signed, may receive the same out of Court, by order of the said Court, upon putting in and perfecting special bail in cause, and payment of such costs to the plaintiff as the said Court shall direct.

Defendant, before issue joined, or judgment signed, may, on perfecting bail, &c. take money out.

See 7 & 8 G. 4. c. 71.

6. It is ordered that a defendant, who shall have put in and perfected special bail in any cause, upon motion to

If defendant has put in bail above, he may

(1) Where a defendant has deposited money in Court under this rule, to abide the event of the suit, and he succeeds, the rule for taking the money out of Court, is *nisi* in the first instance. Lover *v.* Tomlin, 5 Dowl. 388. Syms *v.* Rose, 5 Bing. 269.

still make such deposit, by the leave of Court, and thereupon exonerate his bail.

the Court in which the action is brought, if the Court shall so think fit, may deposit and pay into Court the sum which would have been deposited and paid, in case the defendant had originally elected so to do, together with such further sum, to answer the costs, as the Court may direct to abide the event of the said suit, and to be disposed of in manner aforesaid, and thereupon it shall be lawful for the said Court to direct common bail to be filed for the defendant, and an exoneretur to be entered upon the bail-piece in the said cause.

See 7 & 8 G. 4, c 71.

PROCEEDINGS AGAINST A PARTY IN CUSTODY.

In actions against a prisoner, plaintiff may file appearance for him, and proceed as if defendant had appeared, and service of rules &c. on gaoler to be good service on defendant.

1. That where any plaint shall be filed against any person, who shall be in custody at the time of filing the same, and shall have had four days' notice thereof, or being arrested, shall be committed for want of bail, and shall not have filed an appearance, the plaintiff may file an appearance with the Prothonotary for such defendant, then serve rules for pleading, and all other rules and notices which the said defendant would be entitled to have served on him if the said defendant had himself filed the appearance; and the said defendant shall plead and take notice of the same accordingly, and shall be answerable in the same manner for all defaults by him committed, as defendants, who shall have filed appearances on any summons, and the service of all rules, notices, and process whatsoever, on the gaoler or turnkey of the gaol, where such defendant shall be imprisoned, shall be deemed good service on all such defendants; and that every gaoler, turnkey, or other person who shall have the charge and custody of such defendant, do immediately upon the receipt of such rule, order, notice, or process, deliver and explain the same to such defendant, upon pain of exemplary punishment for their contempt, if they be negligent therein.

See former Pl. R. 62.

2. That when any defendant shall be in custody at the suit of any plaintiff, and the defendant shall have pleaded therein, and such plaintiff shall neglect to proceed in his cause against the said defendant for one whole term, the defendant shall, having given four days' notice to the plaintiff or his attorney, of his intended motion, be, on motion made in Court, on the last day of the term, in which the plaintiff shall have been so neglectful, discharged from the custody of the Sheriff as to that suit, upon filing common bail, or in vacation after the said term, on application to the Chief Justice, or any other Justice of this Court, the like notice having been given to the plaintiff or his attorney; and if he be so discharged in open Court, then the order of the Court for filing such common bail attested by the Prothonotary, and if discharged by a Judge out of Court, the common bail-piece, signed by the Judge, shall be sufficient authority to the Sheriff to set such prisoner at liberty with regard to such suit.

Defendant in custody, having pleaded, may be discharged, in term or vacation, on filing common bail, if plaintiff neglect to proceed for one Term.

What sufficient authority to the Sheriff to discharge.

See former Pl. R. 64.

3. It is ordered, that where any plaintiff hath obtained, or shall hereafter obtain judgment against any defendant who shall be imprisoned or detained in custody by authority of this Court in any action, if such plaintiff shall not charge such defendant in execution upon the said judgment, within ten days next after the expiration of the time allowed by the rules of this Court, for motion in arrest of judgment, or within such further time as shall be given by any rule of this Court to be made on motion in open Court in term time, or by order of the Chief Justice, or of any other Justice of this Court, in vacation, such defendant may, by like rule of Court in term time or order in vacation, be discharged out of custody as to that suit, on filing common bail, unless such plaintiff or his attorney, after two days' notice given by such defendant or by any attorney of this Court on behalf of such defendant, of his intended application for that purpose, either in open Court, if the said ten days or such further time granted as above, or the said two days' notice shall expire in term time, or before any Judge thereof, if they shall expire in vacation, shall shew good cause against any such discharge.

If plaintiff does not charge defendant in execution within 10 days after time allowed by the rules, defendant may be discharged in term or vacation, on filing common bail, unless cause shewn on two days' notice.

See former Pl. R. 87.

TRIAL AND JUDGMENT.

Plaintiff not required (except in ex parte cases) to prove jurisdiction, unless notice given by defendant of intention to dispute it.

New Rule.

1. The plaintiff at the trial shall not be required (except in ex parte cases,) to prove the defendant is subject to the jurisdiction, unless the defendant shall at the time of filing his plea, give notice of his intention to dispute the same; and if such notice shall be given and it shall be established at the trial, to the satisfaction of the Court, that the defendant is subject to the jurisdiction as alleged in the plaint, the costs of proving the jurisdiction shall be paid by the defendant, whatever may be the result of the cause.(1)

Cause to be entered two days before trial or argument.

Six days notice of trial where defendant or his attorney resides in Calcutta.

What, if beyond ten miles from Calcutta.

Party not proceeding accordingly, and not

2. That the party desiring to have the cause tried, or any special argument heard thereon, or after interlocutory judgment, or inquiry of damages by the Court, do enter the name of the cause in a book to be kept by the Clerk of the papers for that purpose, and that no cause shall be tried, or special argument heard, or inquiry of damages made, till at least two days shall have elapsed after such entry; and if the same shall be entered for any more early day, the adverse party may enter a ne recipiatur in the said book, and such cause or argument shall not be heard, or inquiry of damages made, on such day; And that before the trial of any issue joined on any fact, or inquiry of damages, six days' notice in writing shall be given of the day on which the same is to take place on behalf of the plaintiff, to the defendant or his attorney, if such defendant or his attorney shall reside within the town of Calcutta, or within ten miles thereof; and if such defendant shall not employ an attorney, and shall reside at a greater distance than ten miles from Calcutta, then such notice shall be given, as the Court or one of the Judges thereof, shall especially direct; and that where such notice shall be given, and the party on whose behalf the same shall have been given, shall not proceed accordingly, and shall

(1) See *ante* 5, note (1) to general rule 18.

not have countermanded such notice by a notice in writing, served on such party or his attorney, residing in the town of Calcutta, or within ten miles thereof, four days before the day mentioned for trial, or inquiry of damages or on such party not employing an attorney, who shall reside at a greater distance from Calcutta, in such time as shall appear reasonable to the Court, the party on whose behalf such notice shall have been given shall be subject to pay such costs to the opposite party as he shall have been put to thereby, unless he shall shew cause to be allowed in open Court in excuse of such costs; and the party who shall have given such notice, and shall not have proceeded as aforesaid, shall not proceed to trial, or inquiry of damages, on any other future day appointed for the hearing of such causes, unless he shall have given such notice as is before required. And in all cases, wherein no proceedings shall have been had within four terms after issue joined, one term's notice of trial or inquiry of damages shall be given.

countermanding in due time to pay costs, unless, &c.

And shall not proceed again unless, &c.

When no proceedings had for four terms, one term's notice.

See former Pl. R. 43.

3. That if the plaintiff shall, at any time before issue joined, neglect to proceed in his cause two terms after the last pleading put in by the defendant, the defendant may enter a *non pros* with the Prothonotary against the plaintiff with costs.

If plaintiff neglect to proceed, two terms after last pleading by defendant, he may enter non pros.

See former Pl. R. 63.

4. All judgments, whether interlocutory or final, shall be entered of record of the day of the month and year, whether in term or vacation, when signed, and shall not have relation to any other day. (1)

All judgments to be entered of day when signed, in term or vacation.

See G. R. H. T. 4 W. 4.

5. In all actions tried within the last four days of the term or in the sittings, the Court, if the plaintiff or demandant therein shall become nonsuit, or a verdict shall be given for the plaintiff or demandant, defendant or tenant, may indorse on the record at any time before the

In actions tried within four last days of term, or sittings; if the plaintiff become

(1) The Court will not allow judgment to be entered *nunc pro tunc*, except in cases where the delay has arisen from the act of the Court; Vaughan *v.* Wilson, 4 Bing. N. S. 116. S. C. 6 Dowl. 210. Query—if since the new rules the Court will, after the death of a defendant, permit judgment to be entered on a cognovit *nunc pro tunc*, Mann *v.* Ld. Audley, 5 Dowl. 596. See cases on this rule collected in Addenda to Harrison's Index, pp. 26, 36.

nonsuit, or verdict be given, &c. Court may indorse, that execution issue forthwith, or &c.

end of the term or sittings, that in their opinion, execution ought to issue in such action forthwith, or at some day stated in such indorsement, and subject or not to any condition or qualification, and in case of a verdict for the plaintiff, then either for the whole, or any part of the sum found by such verdict; in all which cases a rule for judgment may be given, costs taxed, and judgment signed forthwith, and execution may be issued forthwith, or afterwards, according to the terms of such indorsement, on any day in vacation or term; but in all cases the party entitled to such judgment shall be at liberty to postpone the signing thereof. (1)

See 1 W. 4. c. 7. § 3.

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(1) It seems that at first, the practice under the 1 W. 4. c. 7. § 3, from which this rule was taken, was for the Judge not to grant a certificate for immediate or early execution, except in actions for *debts* due on bills of exchange, promissory notes, for goods sold, and work and labour, money lent, paid or had, and received, or other money claims; though, probably if it were made clear that the defendant was about to leave the country to avoid payment of considerable *damages* in any action whatever, immediate execution would have been granted, 3 Chitt. Prac. 924. The Judges, however, have of late put a more extended construction on this rule, and they will now certify in debt and in all other actions when they think there ought to be an early execution. See Barden *v.* Cox, 1 M. & Rob. 203 Younge *v.* Crook, Ibid. 220. A Judge may certify though the verdict be taken by consent, and the consent does not contain any such terms. Anon, 1 M. & Rob. 167. A certificate has been granted in an action for *mesne profits* and costs in ejectment. Barden *v.* Cox, 1 M & Rob. 203 In an action for criminal conversation, where the plaintiff to prevent a verdict passing against him in consequence of the prevarication of one of his witnesses, consented to be nonsuited, the Judge who tried the cause directed execution to issue at the expiration of a month. Hambridge *v.* Crawley, 5 C. & P 9. And see Fisher *v.* Davies, 1 M. & Rob. 93. Percival *v.* Alcock, 1 M. & Rob. 167. Allsopp *v.* Smith, 7 C. & P. 708. Ward *v.* Thomas, 1 C. & M. 532. S. C. 2 Dowl. 87. D'Aranda *v.* Houston, 6 C. & P. 511. The certificate is not in general granted where there is a reasonable ground of defence, Barford *v.* Nelson, 5 C. & P. 8. Wright *v.* Guiver, Ibid. 9. Crookshank *v.* Rose, Ibid. 19. Lord Lyndhurst, in Gervas *v.* Burtchley, 2 M. & Rob. 150, would not receive an affidavit, in support of an application for immediate execution, but Bayley B. in Ruddick *v.* Simmons, 1 M. & Rob. 184, held otherwise and received it.

In order to induce the Judge to refuse the certificate, the party may, it seems, show by affidavit, or otherwise, facts, which would constitute grounds for a new trial, or for arresting the judgment, or facts, which may induce the Judge to grant time, or other indulgence, as that the defendant had *bonâ fide* ground for trying the cause, or that he was misled by others, or that he is at present unable to pay the damages, but that if time should be granted he will be able to raise the money before the next term, or other future day; or that he has property to deposit, not immediately convertible into money. See Chitt. Arch. Prac. 443. Tidd new Prac. p. 567.

6. That in all actions in which an inquiry of damages shall be had by the Court, after interlocutory judgment, and within the four last days of term or in the sittings after term, the Court shall have the like power of ordering immediate execution.

Where inquiry of damages had Court may also order immediate execution New Rule.

7. Every judgment to be signed under the above rules, may be entered and signed as the judgment of the Court, though the Court may not be sitting on the day of the signing thereof.

Judgment so signed may be entered.

See 1 W. 4. c. 7. § 3.

8. That notwithstanding any judgment signed or recorded, or execution issued under the preceding rules, the Court, if it shall think fit, may order such judgment to be vacated, and execution to be stayed or set aside, and may enter an arrest of judgment, or grant a new trial, as justice may appear to require, and thereupon the party affected by such execution, shall be restored to all that he may have lost thereby, in such manner as the Court shall think fit to direct.

Such judgment or execution may be vacated or stayed, &c.

See 1 W. 4. c. 7 § 3.

9. That after the trial of every issue joined on any matter of fact between the parties, or inquiry of damages made by the Court after interlocutory judgment, the plaintiff or defendant be at liberty to move for a new trial, or inquiry, or in arrest of judgment, within four days after such trial, or inquiry, and the party for whom the opinion of the Court shall have been given, may enter a rule with the Prothonotary to sign the judgment on the fourth day after such trial, or inquiry: and on expiration thereof, if the Court shall not have otherwise ordered, the Prothonotary shall, on the application of the party or his attorney, enter the judgment on the roll, and sign the same, and shall thereupon issue such writ or writs of execution; as may be necessary to enforce such judgment; and the Prothonotary shall, after entering every judgment given in this Court, immediately docket the same in a book to be kept by him for that purpose, by entering the name of the plaintiff and defendant, and their attornies, and the debt and damages recovered, or costs, if the judgment be against the plaintiff, with the term and number of the roll whereon the said judgment shall have been entered, and shall likewise keep an alphabetical list, referring to

Motion for a new trial, &c. or in arrest of judgment may be made within four days after trial or inquiry.

Judgment when to be signed and execution issued.

Judgment to be docketted.

See former Pl. R. 48.

such docket of the names of all parties against whom judgment shall have been given.

How records are to be made up.

10. That the record be entered on a roll of that term in which the plaint was filed, and bear caption setting forth the year of our Sovereign Lady the Queen, her heirs or successors, and her or their style and title, and if the pleas were held before the Chief Justice for the time being, naming him, or in the vacancy of the office of Chief Justice, the Puisne Judge acting as Chief Justice, naming him and his companions, Justices of our Sovereign Lady the Queen, of the Supreme Court of Judicature at Fort William in Bengal, and naming the term and year of our Lord Christ, in which the same were held, and that each roll be marked at the bottom with the number thereof, and that there be marked in the margin the day of the month and year on which any judgment shall be entered on the roll, together with the name of the attorney, and of the party on whose behalf the same is entered.

See former Pl. R. 50.

Where costs awarded, to be taxed, and added to debt or damages before judgment signed; but if not taxed within a year, record to be completed.

11. That before the signing of any judgment where any costs shall be awarded, the costs so awarded shall be taxed by the taxing officer, who shall give a certificate thereof, and thereupon such costs, and no more shall be added to the debt or damages awarded by the judgment; but in cases where the costs shall not be taxed, and the allocatur thereof filed with the Prothonotary within the space of twelve months from the time of the trial of the cause, (at the expiration of which time, the Prothonotary is required to deliver the record and proceedings therein to the keeper of the records,) the Prothonotary is to complete the record without costs, and sign the same.

See former Pl. R. 51.

Where plaintiff neglects to bring issue to trial within the next term after joined, the like judgment as in case of nonsuit may be obtained unless time allowed.

12. That where any issue shall be joined in any action in this Court, and the plaintiff shall neglect to bring such issue on to be tried within the next term, after such issue shall have been joined, upon motion being made in open Court, due notice having been given thereof, the Court shall give the like judgment for the defendant as in case of a nonsuit, unless the Court shall, upon just cause and reasonable terms, allow any further time or times for the trial of such issue; and if the plaintiff shall neglect to try such issue within the time or times so allowed then and in

And if plaintiff neglect to try

every such case, the Court shall proceed to give judgment as aforesaid, and such judgment shall be of the like force and effect as judgment upon nonsuit, and of no other force or effect, and the defendant shall upon such judgment be awarded his costs at the discretion of the Court.

within time allowed, then judgment as aforesaid.

See former Pl. R. 65.

13. That no judgment upon any warrant of attorney to confess judgment, be entered after a year and a day from the granting such warrant of attorney, without affidavit having been made to the satisfaction of the Court in term time, or of a Judge thereof in vacation, of the due execution of the warrant of attorney, that the debt is unsatisfied, and that the person granting such warrant is alive, and a certificate from the Prothonotary, that the said warrant was duly filed, pursuant to the provisions of the statute 9 Geo. IV. c. 73.

No judgment on warrant to confess after year and day unless, &c.

See former Pl. R. 67.

14. That no execution be sued out upon any judgment after the year and day, unless a *cesset executio* be entered on the roll, or an appeal shall have been lodged, without suing out a writ or writs of scire facias against the party aganist whom such judgment shall have been given, which writs of scire facias shall issue, and be made returnable in like manner as writs of scire facias against bail; and after six years, no such scire facias shall issue without the leave of the Court. But if a writ of execution shall have been once sued out, returned, filed, and entered on the roll, it may be continued until a new one is sued out and executed without suing out any scire facias, and be as effectual as if writs had been issued out every term.

No execution after year and day, unless, &c: without scire facias.

See former Pl. R 69.

EJECTMENT.

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1. That in actions of trespass in ejectment, the name of no other person shall be made use of as casual ejector but the crier of this Court, on whom a summons shall be served; and that if the tenant in possession shall not, in pursuance of notice to be given him in that behalf, apply to this Court within eight days after service of the plaint

Crier's name to be used as casual ejector, and how judgment is to be entered against him.

and notice, in case the lands lie in Calcutta, or within ten miles thereof, and in case the lands lie at a greater distance from Calcutta, then within such time as the Court or Judge thereof, shall direct, and enter into a rule to be made defendant, instead of the casual ejector, the plaintiff may, having first filed an affidavit of the due service of a copy of the plaint and notice, and that the lands lie in Calcutta, or are in the actual occupation of one who is subject to the jurisdiction of the Court, (1) setting forth the cause of jurisdiction, enter an appearance for and confess the plaint in the name of the casual ejector, and thereupon judgment shall be entered against him, pursuant to the course prescribed in the 4th rule, relating to ejectments and not otherwise; and in case the plaintiff makes proof of title, a writ shall be directed to the Sheriff, to seize and deliver the possession of the premises in the declaration mentioned to the plaintiff.

How tenant in possession is to come in and take defence in the room of casual ejector.

But it is further ordered, that the tenant in possession shall be at liberty to apply to this Court by petition in writing, signed by himself, praying to be made defendant in the place of the casual ejector, and shall, in such petition set forth, whether he claims title to the whole or a part only, and what part of the premises in question, and shall thereby also confess the lease and entry stated in the plaint against the casual ejector, and that he the said tenant did, after such entry, oust the plaintiff from the possession of the premises to which he claims title by his petition.

See former Pl. R. 29.

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(1) The former rule 29, in Mr. Clarke's edition required, that the plaintiff should file an affidavit, that the lands in question "*lie in Calcutta*, or *are in the actual possession of a British subject*." By the present rule the plaintiff must file an affidavit, that the lands lie in Calcutta, or *are in the occupation of one who is subject to the jurisdiction of the Court, setting forth the cause of jurisdiction*. The old rule 32, of 1774, did not require any affidavit of jurisdiction at all in cases of ejectment; nor did it require from the party coming in to take defence on admission that he was subject to the jurisdiction. The rule of 1774, appears to have remained in force until some time after 1799, and first appears, in the rules and orders published on the 17th November 1803. The present rule *does* require an affidavit of jurisdiction, but does *not* require a party taking defence to admit that he is subject to the jurisdiction except he comes in to defend as landlord. Where no party appears to defend, the 4th rule makes it necessary for the plaintiff to *prove* his title, before he can obtain judgment. See also Smoult's collection of orders 8, 72, 84.

2. When any person shall in future apply by petition to be made defendant, in place of the casual ejector, besides and in addition to the admission he is directed in the said rule to make, he shall admit in and by his said petition that he the defendant (if he defends as tenant, or in case he defends as landlord, that his tenant) was at the time of the service of the declaration in ejectment in possession of such premises as he shall petition to defend for, under the above rule, and that if he defends as landlord he shall also consent to subject himself in that action to the jurisdiction of the Court. And it is further ordered, that henceforth no affidavit shall be made, stating the casual ejector to be subject to the jurisdiction of this Court, by reason of his being a British subject or otherwise.

Defendant in ejectment to admit possession, by himself or tenant.

If as landlord to submit to jurisdiction.

No affidavit of jurisdiction required as to casual ejector.

See former Pl. R. 106.

3. That the attorney for the lessor of the plaintiff in every action of ejectment, where the tenant in possession is not a European, do cause a translation into the vernacular language, of the notice from the casual ejector to the tenant in possession, to be delivered to such tenant, together with the English notice.

Translation of notice from casual ejector to be delivered to tenant when not a European.

See former Pl. R. 81.

4. Where no party shall appear to defend an action of ejectment within the time above limited, the plaintiff shall, in order to obtain judgment, set down the cause to be heard, and at the trial make proof of his title to the premises sought to be recovered.

No judgment against casual ejector without cause heard and proof of title.

Mad. R. 46.

PROCESS.

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1. That writs of summons, or capias in every case, shall be tested of the day on which they actually issue, whether in term or vacaton.

Writs to be tested of the day they issue.

See 2 W 4. c. 39 § 12.

2. That writs of summons, or capias ad respondendum may be returnable either in term or vacation, and that no particular day or number of days shall be specified for the return of the same, but the same shall be returnable forthwith after the execution thereof.

Writs returnable either in term or vacation.

Writs may be executed within four months from date.

3. That writs of summons, or capias ad respondendum may be executed at any time within four calendar months from the day of the date thereof, including the day of such date.

Every writ of summons, &c. may be continued by alias and pluries.

4. Every writ of summons, and capias ad respondendum may be continued by alias and pluries as the case may require, if any defendant therein named, may not have been arrested thereon or served therewith; provided always, that every writ issuing in continuation of a preceding writ, shall be issued within one calendar month after the expiration of the preceding writ, and shall contain a *memorandum indorsed thereon, or subscribed thereto, specifying the day of the date of the first writ.* (1)

Provided that same issued in one month after expiration of former, and memorandum of date indorsed.

When defendant to appear if within 10 miles of Calcutta. See former Pl. R. 12.

5. That the time for the defendant's appearance to a writ of summons, if residing in the town of Calcutta or within ten miles thereof, shall be four days after service thereof.

When, if residing beyond 10 miles. See former Pl. R. 14.

6. That the time for the defendant's appearance to a writ of summons, if residing at greater distance than ten miles from the town of Calcutta, shall be such as the Court or a Judge thereof shall order.

No capias to issue unless ordered by Court or a Judge on affidavit of debt, &c. and no bailable clause inserted unless so ordered.

7. That no capias be made out by the Prothonotary unless the Court or some Judge thereof, (being satisfied by affidavit, or affirmation in writing of a Quaker, that the cause of action is above one hundred current rupees, or that some enormous personal wrong hath been committed by the defendant against the plaintiff) shall order the same, and that no clause authorizing the Sheriff to take bail be inserted in such capias, except the Court or a Judge thereof shall order such clause to be inserted therein.

See former Pl. R. 14.

Where it is intended to hold to bail the process to be by capias according

8. That in all actions wherein it shall be intended to arrest and hold any person to special bail, who may not be in custody in the common jail of Calcutta, the process shall be by writ of capias, according to the form contained

(1) *Query.* Whether except for the purpose of preventing the effect of the statute of limitations, a capias need be returned previous to issuing an alias. Gregory *v.* Des Anges, 3 Bing. N S. 85, and see Nicholson *v.* Rowe, 2 C. & M. 469. Nicholson *v.* Leman, 2 Dowl. 296.

in the schedule annexed to this rule; and so many copies of such process, together with every memorandum or notice subscribed thereto, and all indorsements thereon, as there may be persons intended to be arrested thereon, or served therewith, shall be delivered therewith to the Sheriff, or other officer or person to whom the same may be directed, or who may have the execution and return thereof, and who shall, upon and forthwith after the execution of such process, cause every such copy to be delivered to every person upon whom such process shall be executed by him, whether by service or arrest, and shall indorse on such writ the true day of the execution thereof, whether by service or arrest; And the plaintiff or his attorney may order the Sheriff or the officer or person to whom such writ shall be directed, to arrest one or more only of the defendants therein named, and to serve a copy thereof on one or more of the others; which order shall be duly obeyed by such Sheriff or other officer or person, and such service shall be of the same force and effect as the service of the writ of summons hereinbefore mentioned, and no other.

to form in schedule annexed,

and copies with memorandum or notice subscribed, and indorsements to be delivered to the Sheriff.

Directions to the Sheriff.

May be to arrest one or more defendants and to serve a copy on one or more.

See 2 W. 4. c. 39. § 4.

No. ——

FORT WILLIAM, IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, and so forth: To the Sheriff of the town of Calcutta and factory of Fort William in Bengal, GREETING: We command you that you take ——— of ———, if —— shall be found in the provinces, districts, or countries of Bengal, Behar, and Orissa, or in the province or district of Benares, or in any of the factories, districts, and places, which now are annexed to and made subject to the presidency of Fort William in Bengal aforesaid, and ——— safely keep until —— shall have given you bail, or made deposit with you, in an action on ——— at the suit of ——, or until the said —— shall by other lawful means be discharged from your custody; and we do further command you, that on execution hereof you do deliver a copy hereof, to the said ——; and we hereby require the said —— to take notice, that within —— days after execution hereof, inclusive of the day of such execution, the said —— should cause special bail to be put in for —— in our Supreme Court to the said action, and that in default of so doing, such proceedings may be had and taken as are mentioned in the warning hereunder written; and we do further command you the said Sheriff, that immediately after the execution hereof, you do return this writ to

our said Court, together with the manner in which you shall have executed the same, and the day of the execution hereof; or that if the same shall remain unexecuted, then that you do so return the same at the expiration of four calendar months from the date hereof, or sooner, if you shall be thereto required by order of the said Court, or by any Judge thereof.

Bail as by order

WITNESS SIR ——— Chief Justice, at Fort William aforesaid, the ——day of ———, in the year of our Lord CHRIST, one thousand eight hundred and thirty ——.

(name of)

Attorney *Prothonotary.*

N. B. This writ is to be executed within four calendar months from the date thereof, including the day of such date and not afterwards.

A WARNING TO THE DEFENDANT.

Warning to defendant.

1. If a defendant, being arrested on this writ, shall have made a deposit of money according to the rules of this Court, and shall omit to file common bail to the action, the plaintiff will be at liberty to file common bail for the defendant, and proceed thereon to judgment and execution.

2. If a defendant, having given bail on the arrest, shall omit to put in special bail, as required, the plaintiff may proceed against the Sheriff, or on the bail-bond.

3. If a defendant, being in custody, shall be detained on this writ, or if a defendant, being arrested thereon, shall go to prison for want of bail, and shall not have filed an appearance in the time prescribed by the rules of the Court, the plaintiff may file an appearance for such defendant and proceed thereon to judgment and execution.

Upon every bailable writ, &c. amount of debt and costs to be stated; if paid within four days; proceedings to be stayed. Costs liable to taxation. If one sixth disallowed, attorney to pay costs thereof. See G. R H. T. 2 W. 4.

9. That upon every bailable writ and warrant, and upon the copy of any process served for the payment of any debt, the amount of the debt shall be stated, and the amount of what the plaintiff's attorney claims for the costs of such writ or process, arrest, or copy, and service and attendance to receive debt and costs, and that upon payment thereof within four days to the plaintiff, or his attorney, further proceedings shall be stayed, but the defendant shall be at liberty, notwithstanding such payment, to have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's attorney shall pay the costs of taxation.

The statement shall be written or printed in the following form:

Form of statement.

The plaintiff claims Co.'s Rs ——, for debt, and Co.'s Rs. ——, for costs; and if the amount thereof be paid to the plaintiff or his attorney, within four days from service hereof, further proceedings will be stayed.

10. That within eight days after the execution of any writ of capias, where the defendant shall be arrested in the town of Calcutta, or within ten miles thereof, or if arrested at a greater distance; then in such time as the Court shall have directed, the defendant shall cause special bail to be put into the said action, and that in default of his so doing, such proceedings may be had and taken as in the warning on the writ are mentioned.

Time within which defendant must put in special bail.

See former Pl. R. 12.
See 2 W. 4. c. 39. § 11

11. That in case of any enormous personal wrong, if the Court shall order a writ of capias to issue, it shall be marked at the bottom with the sum, which the Court or the Judge ordering the same shall think it proper, the bail should be liable to, if the bail-bond shall be forfeited.

Capias for enormous personal wrong to be marked with bailable sum

See former Pl. R 14.

12. That the Sheriff be not authorized to take bail but in the sum which shall be required by the Court or a Judge thereof; and that no two writs of execution be issued at the same time, except where judgment shall be given in a plaint in trespass in ejectment for the plaintiff, in which case, the Prothonotary may issue the writ of execution against the effects, or a capias ad satisfaciendum, together with a writ of possession, if the plaintiff shall so require, except the Court or some Judge thereof shall make special order that two writs do issue at the same time; and that no writ of execution against the effects do issue in any cause in which a capias ad satisfaciendum shall have first issued, unless non est inventus shall have been returned to such writ of capias.

Sheriff to take bail in sum required only.

Two writs of execution not to issue at same time except, &c. unless special order.

No fi. fa. after ca. sa. unless same returned non est inventus.

See former Pl. R. 14.

13. It is ordered that neither any capias ad respondendum nor any summons to any defendant to appear in any plaint filed in this Court, except an alias or pluries writ or summons, do issue from the Prothonotary's office, unless affidavit be made to the satisfaction of the Court or a Judge thereof, that the defendant is subject to the jurisdiction of the Court, and that the affidavit do particularly specify in what manner the defendant is so subject to the jurisdiction of the Court.

No capias or summons to issue without affidavit of defendant being subject to the jurisdiction, and how.

See former Pl. R. 15.

No order for capias without certificate from attorney.

See former Pl. R. 108.

14. That no order be made for a capias ad respondendum, unless there be, in addition to the affidavit for debt, a certificate of one of the attornies of the Court, that he has made personal inquiry and investigation as to the plaintiff's claim, and the parties to the suit, and that he believes the claim to be just, and the affidavit thereof true.

Sheriff not to make out warrant before writ delivered, nor any blank warrant.

See former Pl. R. 16.

15. That the Sheriff or his deputy do not deliver or make out, nor cause or suffer to be made out, any summons or warrant, before the writ, precept, rule, order, or process, which shall be the authority for the same, be duly sued forth, and delivered to the Sheriff or his deputy; and that the Sheriff or his deputy, do not deliver or make out, or cause to be delivered or made out, any blank summons or warrant.

Ca sa. fi. fa. and vend. ex. to be marked with real debt before delivered to Sheriff.

See former Pl. R. 17.

16. That every writ of capias ad satisfaciendum, fieri facias, and venditioni exponas, be indorsed by the party or his attorney suing out the same, with the sum to which the real debt shall amount, before the said writ shall be delivered to the Sheriff, and no poundage shall be taken for executing such writ, or charging any person in execution, by virtue of such writ, on a greater sum than the real debt amounts to.

Sheriff not compelled to execute alias capias further from Calcutta than ten miles, unless, &c.

See former Pl. R. 74.

17. That when a capias shall have been issued, and non est inventus returned thereto, the Sheriff shall not be compelled to execute another capias, to enforce an appearance in the same cause, at a greater distance from the limits of the town of Calcutta than ten miles, unless affidavit be made, to the satisfaction of the Court or a Judge thereof, setting forth a probable ground of belief that the same may be executed; and unless such affidavit shall be, at the time of the delivery of the writ, shewn to the Sheriff or his deputy, and immediately after filed with the Prothonotary of this Court.

In proceedings against Mahomedan or Hindoo woman, no capias, except for contempt, unless affidavit that she is not of rank, &c. which

18. And it is further ordered, that in every plaint in any suit by which a Mahomedan or Hindoo woman shall be made defendant, the first process shall be a summons, and that, except in case of disobedience to a summons, no capias shall issue against such defendant, unless an affidavit shall be made, to the satisfaction of the Chief

Justice or other Justice of this Court, that such Mahomedan or Hindoo woman is not of a rank, character, or profession, which would either by the manners or religious usages of the natives of these provinces, exempt her from a similar process, and unless the said Chief or other Justice shall thereupon make an order in writing for such capias; And further, that no capias ad satisfaciendum do issue against such defendant, unless it be made to appear by affidavit, to the satisfaction of the Chief or other Justice of this Court, that such writ is necessary to the due execution of the laws, and the attainment of Justice, and unless the said Chief or other Justice shall thereupon make an order in writing for that purpose.

by usage exempts her from similar process and Judge's order.

No ca. sa. against her, unless affidavit of necessity and Judge's order.

See former Pl. R. 85.

19. That if the Sheriff or any other person entrusted with the execution of any such writ, precept, rule, order, or process, shall wilfully delay the execution or return of the same, or shall take any undue fee for the same, or shall give notice thereof to any person, thereby to frustrate the execution of the same, or having levied money, shall detain it in his hands after the said return, the said Sheriff or other person so offending, shall be summarily and exemplarily punished for such contempt and misdemeanor; And that no person whatsoever be permitted to search the Sheriff's or the Prothonotary's office, for any writ of execution, or for any mesne process, except an attorney of this Court, nor such attorney, unless he shall undertake to put in bail to the action, or appear for the defendant, or perform the exigency of the writ, as the case shall require.

Sheriff &c. to be summarily punished for misconduct in execution of writs, &c.

No person but an attorney to search Sheriff's or Prothonotary's office for writ, &c. nor attorney unless, &c.

See former Pl. R. 23.

20. That the Sheriff do not deliver any person arrested by virtue of any process issuing out of this Court to bail, or take by colour of his office any obligation from such person, or any surety for his appearance at the return of such process, but to himself and in the name of his office, and that only in cases where a clause shall be inserted in such process, authorizing him to take bail for such person, and the condition of such obligation shall express the terms on which the Sheriff is authorized by the said process to deliver such defendant to bail, and shall be, that the defendant shall perform the same.

Bail-bond to be taken by the Sheriff in the name of his office, and only where authorized by writ.

Form of condition.

See former Pl. R. 21.

Sheriff to deliver copy of inventory of goods seized, &c. when required

See former Pl. R 22.

21. That the Sheriff do deliver a true copy of the inventory of any goods seized or sequestered, by virtue of any writ or order of this Court, subscribed with his name or the name of his deputy, to the party or his attorney requiring the same, and paying such fee as by the table of fees is required.

Prothonotary to file plaints in replevin delivered by the Sheriff.

Process to issue thereon as in other cases.

See former Pl. R. 28.

22. That the Prothonotary of this Court shall receive every plaint in replevin, which shall be delivered to him by the Sheriff, and shall file the same of record, in such manner, and of such date, as he would have filed the same, if it had been delivered to him on the day indorsed by the Sheriff thereupon, and shall mark in the margin the day when the Sheriff shall have delivered the same to him, and the summonses and other processes of this Court, shall issue thereupon in like manner as where plaints shall be filed by the plaintiffs themselves, or by common attornies.

Goods taken by distress, replevisable as in England, securities taken to be for prosecuting the plaints in this Court.

Sheriff to file with the proper officer all plaints in replevin, indorsing date of receipt.

Natives not subject to jurisdiction applying for replevin to give bond in sum exceeding 500 rupees, with

23. That in all cases of distress taken of goods replevisable by the law of England, where the party whose goods have been distrained shall authorize the Sheriff or any one of his deputies (whom he is hereby empowered to appoint for the purpose of making replevins) to file of record a plaint in replevin at the expense of the said party, and in his name, or that of his lawful attorney against the person or persons who shall have taken the said goods, the said Sheriff shall by himself, or one of his said deputies, replevy the said goods in the same manner and upon the like securities as the Sheriffs in England are by law empowered to do; but all securities to be taken by him for prosecuting plaints in replevin, shall be for prosecuting the same in this Court, and that the Sheriff shall forthwith return to, and file of record, with the proper officer of this Court, all plaints so taken by him or his deputies, whereupon he shall have made replevin, together with an indorsement setting forth the day on which he or they shall have received the same; and that in all cases where the person applying for such replevin shall happen to be a native of India, not subject to the jurisdiction of this Court, then and in such case always, the penalty of the said bond shall be taken in a sum exceeding five hundred current rupees, and that in the obligation there shall be

inserted an agreement that the penal sum, when forfeited, may be sued for and recovered in this Court; And that in all cases where the distrainer shall claim property in any part of the goods distrained, the Sheriff shall, notwithstanding, proceed to replevy the same, leaving it to the party distraining to put such property in issue, by his avowry or plea.

agreement to submit.

Sheriff to proceed to replevy, notwithstanding.

See former Pl R. 27.

MISCELLANEOUS.

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1. That the Prothonotary shall enter in a book, to be kept by him for that purpose, all such rules (except rules for pleading) as shall be made in causes commencing by plaint, and shall enter in another book, to be kept for that purpose, minutes of every motion, and of every judgment pronounced in the same.

Prothonotary to enter all rules (except rules for pleading), and all motions and judgments.

See former Pl R. 40.

2. That if the plaintiff take issue on any fact in any part of the pleadings of the defandant, he may immediately join the same, and whenever issue is joined in any cause either in fact or in law, the Clerk of the papers shall deliver over all the pleadings, suggestions, and other matters, which are to be entered on the record, to the Prothonotary, who shall thereupon immediately, if required by the plaintiff so to do, make up the record, and the plaintiff having set down his cause with the Clerk of the papers, may proceed to trial, giving such notice as by the rules of this Court is required.

When issue joined, Clerk of the papers to deliver pleadings to Prothonotary, who shall make up record, if required.

See former Pl. R. 41.

3. That in all causes where the plaintiff shall require the Prothonotary to make up the record, he shall give him notice thereof on the same day that he gives notice of trial.

Notice to Prothonotary to make up record.

See former Pl. R. 42.

4. In all cases where a party shall neglect to give the proper notice to the Prothonotary, according to the last rule, to make up the record, and the Prothonotary shall bring the default to the notice of the Court, at the time the cause is called on for trial, the cause shall stand over

Party neglecting to give notice, cause to stand over and party to pay costs.

See former Pl. R. 112.

and the party making the default, shall pay the costs consequent thereon, as between attorney and client.

Clerk of the papers to enter causes for trial, &c. according to application, and make out list and fix up same in Court two days before trial, &c.

5. That the Clerk of the papers do enter in his book, the causes which shall be set down for argument, hearing, or trial, immediately on the application of the parties, or their attornies, according to the priority of such application; and that a list of the same be made out by the said Clerk, in the order in which the same shall be entered in his book, and that the said list be fixed up openly in the Court two days before the trial or hearing of such cause; and that the same be called on, heard, and tried in such order, except the Court shall make other rule or order therein.

See former Pl. R. 44.

No warrant to confess to be taken from prisoner on mesne process, but in the presence of his attorney.

6. That where any person shall be in custody on *mesne process*, no warrant of attorney to acknowledge a judgment in the action in which such person shall be so in custody shall be taken, but in the presence of an attorney for such person, which attorney shall then subscribe his name thereunto, and such warrant shall be produced, when such judgment shall be acknowledged and be filed on record by the Prothonotary; And that no attorney shall acknowledge or cause to be ack nowledged or entered, any judgment, by colour of any warrant gotten from any defendant in such custody, otherwise than as aforesaid. (1)

No attorney to acknowledge judgment otherwise.

See former Pl. R. 68.

All pleadings except plaint to remain with Clerk of the papers until issue joined.

7. That all pleadings in every cause commencing by plaint, (except the plaint) do remain in the hands of the Clerk of the papers, until issue shall be joined, or until the plaintiff or defendant shall, by the rules of the Court, be entitled to have the record made up, at which time the Clerk of the papers shall deliver over the same to the Prothonotary, and the record, when made up, shall, by the Prothonotary, be produced in Court at the trial or hearing

(1) This rule must be strictly complied with otherwise the judgment or other proceedings had under the warrant of attorney may be set aside. Fisher *v.* Papanicholas, 4 Tyr 44. S. C. 2 Dowl. 251. It is clear that the presence of the plaintiff's attorney will not be sufficient, although the defendant consent at the time to his acting as his attorney also. Hutson *v.* Hutson 7 T. R. 7. Nor would it be a sufficient compliance with the rule, that an attorney should be named by the plaintiff and adopted by the defendant. White *v.* Cameron, 6 Dowl. 476. See cases collected, Chitt. Arch, Prac. 719.

of any argument in the cause, and shall remain in his hands until the expiration of twelve months, and if no appeal be from the judgment of the Court, the Prothonotary shall then deliver over the same to the keeper of the records and muniments of this Court; but if there be such an appeal, then the Prothonotary shall detain the record in his hands, until such appeal shall be withdrawn or otherwise finally determined, and shall within one month after the determination of such appeal, deliver over the said record to the keeper of the records and muniments.

or party entitled to have record made up, when he is to deliver same to Prothonotary, who shall produce record on trial or argument, when to be delivered to keeper of records. See former Pl. R. 71.

8. That no common law causes be set down for hearing on Mondays and Thursdays in term time, without the leave of the Court; and that no cause be set down in the paper for hearing within the two last days of the term.

No cause set down for Monday and Thursday, nor within 2 last days of term. See former Pl. R. 75.

9. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step after knowledge of the irregularity.

Application to set aside proceedings for irregularity when to be allowed. See G. R. H. T. 2 W. 4.

10. That all special cases and special verdicts be signed by the junior Counsel on each side, and be filed with the Prothonotary; and that the Clerk of the papers do not set down any special cases or special verdicts for argument, without a certificate from the Prothonotary to that effect.

All special cases, &c. to be signed by junior Counsel on each side. Prothonotary to certify same. New Rule.

11. In every action brought by any executor or administrator in right of the testator or intestate, such executor or administrator shall, unless the Court shall otherwise order, be liable to pay costs to the defendant in case of being nonsuited or a verdict passing against the plaintiff, and in all other cases in which he would be liable if such plaintiff were suing in his own right upon a cause of action accruing to himself; and the defendant shall have judgment for such costs, and they shall be recovered in like manner. (1)

In actions by executors, &c. they shall be liable to costs, unless, otherwise ordered.

See 3 & 4 W. 4. c. 42, § 31.

(1) As a general rule since the passing of the statute 3 & 4 W. 4. c. 42. § 31, from which this rule is taken, Executors, plaintiffs, are liable to costs where they do not succeed, and it is incumbent on them to show some facts which may

Where *nolle prosequi* entered defendant entitled to costs unless otherwise ordered
See 3 & 4 W.4. c. 42. § 33.

12. When any *nolle prosequi* shall have been entered upon any count, or as to part of any plaint, the defendant shall be entitled to, and have judgment for, and recover his reasonable costs in that behalf, unless the Court shall otherwise order. (1)

In cases not provided for, practice of King's Bench to prevail.

13. In all cases on the plea side of this Court not specially provided for by any rule, the proceeding shall be governed by the practice of the Court of Queen's Bench, or as near thereto as circumstances will admit.

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satisfy the Court that they should be exempt in the particular case. Thus, to induce the Court to exempt an executor who has failed in an action, brought by him in that character, from costs, it is not sufficient, that the action has been brought *bonâ fide* under Counsel's advice, and that it has been defeated on a difficult point of law, unless there be improper conduct on the part of the defendant Unnecessary prolixity in the pleadings is not such conduct nor the omitting to give the plaintiff information, which might have prevented his proceeding with the action, if the plaintiff did not apply for the information Farley *v.* Briant, 3 Ad & Ell 839. But *mala fides*, or misconduct on the part of the defendant, in general will be considered sufficient to exempt a plaintiff executor from paying costs Brown *v.* Croley, 3 Dowl. 386 See the case of Wilkinson *v* Edwards, Ibid 137 S C. 1 Bing. N.S 301 Ashton *v.* Poynter, 3 Dowl 465 Lakin *v.* Massie, 4 Dowl 239 Godson *v.* Freeman, Ibid 543 Engler *v.* Twisden. 2 Bing. N S. 263.

(1) Where a *nolle prosequi* is entered as to part of the sum claimed in the plaint, the defendant is entitled to his costs, after such a *nolle prosequi*, it is too late for the plaintiff to contest the propriety of the pleas. Williams *v.* Sharwood, 3 Bing N. S. 331 —S. C. 5 Dowl. 371.

Additional Rules passed 7th January 1840.

It is ordered, that the following Rules altering the mode of pleading in the Supreme Court of Judicature at Fort William in Bengal, having received the confirmation of the President of the Council of India in Council, as required by the 2 and 3 Vict. C. 34, § 2, be now read and passed as the rules and orders of the Supreme Court of Judicature at Fort William in Bengal, to take effect from the seventh day of January, 1840.

1. It is ordered, that the 26th and 28th of the Plea rules (*Title,* Pleas, &c.) be repealed and that in the place thereof the two following amended rules be substituted, viz.

For the 26th Rule.

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2. When money is paid into Court such payment shall be pleaded in all cases and as near as may be in the following form, *mutatis mutandis.* Payment of money into Court.

FORM OF PLEA.

C. D. }
ats. } The Day of
A. B. }

The defendant by his attorney [*or,* in person, &c.] says [*or, in case it be pleaded asto part only, add,* "as to Rs. being part of the sum in the plaint, *or* " count mentioned," *or* "as to the residue of the sum of Rs."] that the plaintiff ought not further to maintain his action, because the defendant now brings into Court the sum of Rs. ready to be paid to the plaintiff ; and the defendant further says, that the plaintiff has not sustained damages [*or in actions of debt* " that he never was indebted to the plaintiff"] to a greater amount than the said sum of, &c. in respect of the cause of action in the plaint

mentioned [*or* "in the introductory part of this plea mentioned"]: and this he is ready to verify; wherefore he prays judgment if the plaintiff ought further to maintain his action thereof.—(1)

See G R. T. T I. Vict.

For the 28th Rule.

Proceedings by Plaintiff after payment of money into Court.

3. The plaintiff after the filing of a plea of payment of money into Court shall be at liberty to reply to the same by accepting the sum so paid into Court in full satisfaction and discharge of the cause of action, in respect of which it has been paid in and he shall be at liberty in that case to tax his costs of suit, and in case of non payment thereof within forty eight hours to sign Judgment for his costs of suit so taxed, or the plaintiff may reply, "that he has sustained damages [*or*, "that the defendant was and is indebted to him," *as the case may be*] to a greater amount than the said sum" and in the event of an issue thereon being found for the defendant, the defendant shall be entitled to judgment, and his costs of suit. (2)

See G. R. T. T. 1 Vict.

General issue by Statute

4. It is further ordered, that in every case in which a defendant shall plead the general issue intending to give the special matter in evidence by virtue of any act of parliament, he shall insert in the margin of the draft of the plea the words—"By statute," otherwise such plea shall be taken not to have been pleaded by virtue of any act of parliament, and such memorandum shall be inserted in the margin of the record. (3)

See G R. T T. I. Vict.

(1) See former Rule, p 55, and cases in note (2.) See also Finlayson *v.* Mackenzie, 3 B. N. C. 824. Jourdain *v* Johnson, 2 C *M* and R 564 Lorymer *v* Vizen, 3 B. N. C. 222. The only material distinction between the rules repealed and the language of the rules thus substituted for them, would seem to be that in the plea the defendant in actions of debt must plead that he "*never was* indebted" instead of "that he *is* not indebted;" and that in the replication instead of saying "that the defendant *is* indebted to him" the plaintiff must allege "that the defendant *was and is* indebted."

(2) See former Rule 55. And see Brooks *v.* Rigby, 2 A & E. 21. Gover *v.* Elkins, 3 M. W. 216

(3) See R 53 p. 68. *ante* and *note* (1). This rule appears to have been first alluded to in an observation thrown out by Parke B in Wells *v.* Ody, 2 C M. and R 128, where to trespass for putting bricks on plaintiff's close, defendant pleaded the plea of not guilty.—The defence was under the building act 14 G. 3, c. 78, under which defendant claimed to give the special matter of this being a party wall, in evidence, and also to nonsuit the plaintiff for not giving him twenty day's notice of action under that act. Parke B. stated that the Judges were desirous that some regulation should be made as to the form in which a general issue under a statute should be pleaded, but thought they were prohibited by the late act from so doing.

5. In any case in which the plaintiff (in order to avoid the expense of a plea of payment) shall have given credit in the particulars of his demand for any sum or sums of money therein admitted to have been paid to the plaintiff, it shall not be necessary for the defendant to plead the payment of such sum or sums of money; but this rule is not to apply to cases where the plaintiff, after stating the amount of his demand, states that he seeks to recover a certain balance without giving credit for any particular sum or sums.(1)

Payments credited in particulars of demand need not be pleaded.

Rule not to apply to claim of balance.

See G. R T T. I Vict.

6. Payment shall not in any case be allowed to be given in evidence in reduction of damages or debt, but shall be pleaded in bar.(2)

Payment in reduction, to be pleaded.
See G. R. T. T. I. Vict.

7. That to any plea in abatement of the nonjoinder of another person, the plaintiff may reply that such person has been discharged by bankruptcy and certificate, or under an act for the relief of insolvent debtors.(3)

Replication of Bankruptcy, &c. to plea of nonjoinder
See 3 & 4 W. 4. C. 42. § 9.

8. That in all cases in which after such plea in abatement the plaintiff shall, without having proceeded to trial upon an issue thereon, commence another action against the defendant or defendants, in the action, in which such plea in abatement shall have been pleaded, and the person or persons named in such plea in abatement as joint contractors, if it shall appear by the pleadings in such subsequent action, or in the evidence at the trial thereof, that all the original defendants are liable, but that one or more of the persons named in such plea in abatement are not liable as a contracting party or parties, the plaintiff shall nevertheless be entitled to judgment, or to a verdict and judgment, as the case may be, against the original

Where after plea in abatement second action brought.

When Plaintiff entitled to judgment, and Defendant when.

(1) See R 3, p 40 *ante*, note (2).

(2) See preceding note.

(3) The Bankruptcy or insolvency of a joint contractor did not enable the plaintiff to declare against the other parties. It was necessary to commence the action against all the parties to the contract, and in case any of the defendants pleaded a certificate or discharge, it became necessary for the plaintiff to enter a *nolle prosequi quoad* him The clause provides a remedy for this circuity of obtaining justice by permitting the plaintiff at once to sue only the solvent parties; it seems, however, that if the general issue be pleaded by a defendant who sets up his bankruptcy or insolvency, a *nolle prosequi* cannot be entered, for the entry of a *nolle prosequi* against one defendant who pleads the general issue in an action *ex contractu* against several, discharges all. Tidd 682. 896; Chitt. Pl. 15.

defendant or defendants, and every other defendant shall have judgment, and shall be entitled to his costs as against the plaintiff who shall be allowed the same, as costs in the cause, against the defendant or defendants who shall have so pleaded in abatement the nonjoinder of such person; provided, that any such defendant, who shall have so pleaded in abatement shall be at liberty, on the trial, to adduce evidence of the liability of the defendants named by him, in such plea in abatement.

See 3 & 4 W 4 C 42 § 10.

Commencement of Plaint in second action after plea of nonjoinder

9. In all cases under the preceding rule in which after a plea in abatement of the nonjoinder of another person, the plaintiff shall, without having proceeded to trial on an issue thereon, commence another action against the defendant or defendants in the action in which such plea in abatement shall have been pleaded and the person or persons named in such plea in abatement, as joint contractors, the commencement of the plaint shall be in the following form [*Venue.*] "A.B. by E.F. his attorney [*or*, in his own proper person, &c.] complains of C. D. and G. H. who have been summoned to answer the said A.B. and which said C. D. has heretofore pleaded in abatement the nonjoinder of the said G. H. &c." [The same form to be used *mutatis mutandis* in cases of arrest and detainer.]

See G R. H T. W. 4.

Plea in abatement for misnomer not allowed
Plaint to be amended on Judge's summons

10. That no plea in abatement for a misnomer shall be allowed in any personal action, but that in all cases in which a misnomer would heretofore have been pleadable in abatement in such actions, the defendant shall be at liberty to cause the plaint to be amended, at the cost of the plaintiff, by inserting the right name upon a Judge's summons, founded on an affidavit of the right name, and, in case such summons shall be discharged, the costs of such application shall be, paid by the party applying, if the Judge shall think fit (1).

Costs

See 3 & 4 W 4 C 42 § 11

Initials in Bills of Exchange, &c.

11. That in all actions upon bills of exchange or promissory notes, initials, in bills of exchange, &c. or other written instruments, any of the parties to which

(1) See R 33, *ante* 57, now altered as above.

are designated by the initial letter or letters, or some contraction of the christian, or first name or names, it shall be sufficient in every affidavit to hold to bail, and in the process or plaint, to designate such persons by the same initial letter or letters, or contraction of the christian, or first name or names, instead of stating the Christian, or first name or names in full. (1).

See 3 & 4 W. 4. c 42 § 12.

(1) Mr. Charnock observes, that a more sensible and expedient enactment, and one that the usage of men of business required, never received the sanction of the Legislature

The Court refused to allow the christian name of a plaintiff to be amended after issue joined, it being unnecessary Moody v Aslett, 3 Dowl 486

This section was made in furtherance of the 32 rule of H T 2. W. 4 and they together have had the effect of putting a stop to incessant applications, to set aside writs and bail bonds, and to pleas in abatement for misnomer, Charn Dig. 272

Quære. Whether since the act a defendant who has been arrested by a wrong christian name is entitled to be discharged on motion Callum v Leeson, 2 C & M, 406.

EQUITY RULES.

EQUITY RULES.

RULES FOR THE MASTER'S OFFICE.

Master to keep book exhibiting at one view the whole course of proceeding had before him in each case. (1)

1. The Master shall enter in a book, to be kept by him for that purpose, the name or title of every cause referred to him, and the time when the decree or order is brought into his office, and the date and description of every subsequent step taken before him in the same cause or matter, and the attendance or non-attendance of the several parties in each of such steps, so that such book may exhibit, at one view, the whole course of proceeding which is had before him, in each particular cause and matter. *(a)*

Registrar to file with Master, copy order of reference within four days.

Master to mark when received.

Registrar to charge for office copy. (2)

2. The Registrar shall, within four days after the drawing up of any decretal or other order, directing any reference to the Master, file with the Master, an office copy of such order, or so much thereof as relates to the reference, and the Master shall, on the receipt thereof, mark the time when he shall so receive the same on the back of the office copy, and the Registrar shall be entitled to charge for the office copy, and be paid for the same, as if it had been taken out by the parties.

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(1) See former Equity Rule 106, of 1829, and see Lord Lyndhurst's order, 49. which adopts Proposition 66, of Chancery Commissioners' Report;—and see note. *(a) infra.*

(2) See former Eq. R. 72, in part.

(*a*) "As a necessary means for enforcing all other regulations, we propose "that the Master should keep in a book a distinct record of every direction "given by himself, and of every step taken in each cause or matter in his office, "so that he, or his Clerk, or the Court (when necessary) may see at one view the

Master on receipt thereof to issue warrant to attend. (1)

3. The Master, on the receipt of such office copy shall issue his warrant ex officio to the attornies of the respective parties, calling upon them to attend him at a time to be named in the warrant, for the purpose of taking into consideration the matter of the said decree or order.

Master's warrant peremptory. at liberty to continue attendance and increase solicitor's fee.

4. That every warrant for attendance before the Master, shall be considered as peremptory, and the Master shall be at liberty to continue the attendance beyond the usual two hours, and during such time as he thinks proper, and shall be empowered to increase the fee for the solicitor's attendance, in proportion to the time actually occupied; and in case the Master shall not be attended by the solicitor, or a competent person on behalf of the solicitor of any party, the Master shall in such case disallow the usual fee for the solicitor's attendance, taking care, either in allowing an increased fee or disallowing the usual fee, to mark his determination in his minute-book, and also on the warrant for attendance.

When not attended by solicitor or competent person to disallow fee. (2)

At time appointed for considering decree or order, Master to regulate the manner of its execution, &c. (3)

5. At the time so appointed for considering the matters of the said decree or order, the Master shall proceed to regulate, as far as may be the manner of its execution; *as for example*, to state what parties are entitled to attend future proceedings, to direct the necessary advertisements, and to point out which of the several proceedings may be properly going on *pari passu*, and as to what particular matters interrogatories for the examination of the parties appear to be necessary, and whether the matters

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"whole course of the proceeding in any particular case. The books of the office "and the notes taken by the Master will, in general, furnish such information at "present, but in an imperfect manner; and we are satisfied that much good "effect would follow, if each Solicitor knew and saw, that there was lying by the "Master's side a book, which would, at any time, furnish authoritative evidence "of every step taken in the cause, and of the activity or negligence with which "the proceedings were conducted." Chan. Com. Rep. 20.

(1) See former Eq R. 107, of 1829, and see Ld. Lynd. ord. 50, which adopts Prop. 67, Chan. Com. Rep.

(2) New Rule. See Ld. Lynd. ord. 59, which adopts Prop. 77, Chan. Com. Rep.

(3) See former Eq. R. 108, of 1829, and see Ld. Lynd. ord. 51, which adopts Prop. 68, Chan. Com. Rep.;—and see notes *(a)* and *(b) post.*

requiring evidence, shall be proved by affidavit (*a*) or the examination of witnesses, and in the latter case, if necessary, to issue his certificate for a commission. And if the Master shall think it expedient so to do, he shall then fix a certain time or times, within which the parties are to take any proceeding or proceedings before him. (*b*)

May fix time for proceeding.

6. That upon any subsequent attendance before him in the same cause or matter, the Master, if he thinks it expedient so to do, shall fix a certain time or times, within which the parties are to take any further proceeding or proceedings before him, and shall also regulate the mode of proof, as in the foregoing fifth rule mentioned. (*c*)

Master to fix time for further proceedings, & regulate mode of proof. (1)

7. Where by any decree or order of the Court, books, papers, or writings are directed to be produced before the Master, for the purposes of such decree or order, it shall

When books, &c. are to be produced, Master to determine what books, &c.

(*a*) If the Master does not decide, in the first instance, to admit affidavits, he cannot afterwards do so, unless by consent. Gibbs *v.* Payne, 4 Sim. 554. It was stated by the M. R. in Rowley *v.* Adams, 1 M. & K. 543, that the consent of all parties is necessary, and that the Master cannot proceed in an inquiry before him by affidavit without such consent. See also Willan *v.* Willan, 19 Ves. 593. Seton on Decrees, p. 22. n. Morgan *v.* Lewis, 1 Newl. Prac. 333, note.

(*b*) "It is not to be conceived, by any persons who have not had much experience in these matters, how much time is frequently lost, for want of taking a comprehensive view of the whole decree, at an early period. The solicitor takes up and prosecutes one inquiry, or one account only, at a time when, perhaps the whole directions of the decree might have been conveniently carried into effect, within the space of time which is employed upon that single inquiry or account, and it not unfrequently happens, that the Master or his Clerk, when applied to for a general report, discovers, upon going through the decree, that some material part of it has been overlooked, by those whose duty it was to carry on the proceedings."—Chan. Com. Rep. 20.

(1) New Rule. See Ld. Lynd. ord. 52, which adopts Prop. 69, Chan. Com. Rep.;—and see note (*c*)

(*c*) "By having an accurate record of all the proceedings in the office, and by fixing stated times for certain proceedings, whenever the nature of the case admits of it, it will at least be made obvious, to any person conducting a cause, that, if he is guilty of delay, his conduct must be exposed to the Master; and may readily be represented to the Court; and evidence will be secured to show what each person does, and what each person omits to do."—Chan. Com. Rep. 21.

be in the discretion (*a*) of the Master, to determine what books, papers, or writings are to be produced, and when and for how long they are to be left in his office, and what entries thereof are to be translated, if not in English; or in case he shall not deem it necessary that such books, papers, or writings should be left or deposited in his office, then he may give directions for the inspection thereof, by the parties requiring the same, at such time and in such manner as he shall deem expedient. (*b*)

or may give directions for inspection there of elsewhere.(1)

Parties searching books whole day in Master's office charged but one attendance. (2)

8. Upon all searches and examinations of books or papers in the Master's office, the parties or their attornies, upon each attendance shall be at liberty to search and examine during the whole of the time, that the office is actually open any one day without being charged by the Master for more than one attendance upon him.

Master may proceed de die in diem (3)

9. That the Master shall be at liberty, without order, to proceed in all matters *de die in diem*, at his discretion.

Charge and discharge abolished

Parties accounting to bring in accounts in form of debtor and creditor.

Other parties not satisfied

10. That the mode of proceeding to take accounts by charge and discharge be abolished, and all parties accounting before the Master shall bring in their accounts in the form of debtor and creditor, wherein shall be truly set forth all sums received by the party accounting, and any of the other parties who shall not be satisfied with the accounts so brought in, shall be at liberty to examine the

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(1) New Rule. See Ld. Lynd. ord. 60, which adopts Prop. 78, Chan. Com. Rep. This order was held to be retrospective in the matter of Llantrissant, 1 B. & M. 25;—and see notes *(a)* and *(b)* *infra*.

(2) See former Eq. R. 105, of 1829.

(3) New Rule. See Ld. Lynd. ord 58, which adopts Prop. 76, Chan Com. Rep.

(*a*) The discretion of the Master subsists, notwithstanding the usual direction for the production of *all* documents, in matter of Llantrissant, *supra*.

(*b*) The refusal to *leave* documents after warrant by Master, directing them to be left, is a disobedience of the order to produce them. Shirley *v.* Ferrers, 1 M. & C. 304, and see Sidden *v.* Liddiard, 1 Sim. 388. For cases in which the Court has ordered the production of documents, see Attorney General *v.* Ellison, 4 Sim. 238. Baker *v.* Henderson, 4 Sim 27. Fencott *v.* Clarke, 6 Sim. 8. Walburn *v.* Ingilby, 1 M. & K. 61, 79. Burrell

accounting party upon oath, either vivâ voce or upon interrogatories, and either before or after the proof of that side of the account, which constitutes the discharge of the party filing it, shall have been regularly gone through, as the Master shall direct.

with accounts, may examine accounting party upon oath, vivâ voce or on interrogatories. &c. (1)

11. On proving and verifying such accounts, the general mode of proceeding to be this: the Master shall go through that side of the account which is to constitute the discharge of the party filing it, item by item, and shall call on the other side, either to admit each item or the vouchers thereof, if he shall deem it expedient so to do: and in case such admission shall be refused, the Master shall then call on the party refusing to state the grounds of refusal, which shall be entered by the Master in his minute book; and in case the refusal shall be adhered to, the Master, in making his report, shall specify by schedule the number and amount of such items subsequently proved, or disallowed, and shall also in such schedule state his opinion upon each item, and the grounds of such opinion, whether the admission was properly or improperly refused and in all cases in which the Master shall report, that an admission was improperly refused, and the Court shall confirm such report, the party refusing, shall pay, as between attorney and client, all the costs occasioned by the subsequent proof, and also such costs for delaying the reference and report, as the Court shall order.

Mode of proving and verifying such accounts. (2)

Master may require admission of items or vouchers.

Form of report

When party refusingadmission shall pay costs as between attorney and client.

12. The Master shall have power at his direction to examine a witness either upon interrogatories or vivâ voce, and in the latter case, the evidence shall be taken down by the Master, or by a clerk, in his presence, and

Master may examine a witness on interrogatories, or vivâ voce; in

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v. Nicholson, Ibid 680? Storey *v.* Lord George Lennox, 1 Keen, 341. S. C. 1 M. & C 525. For cases in which the Court has refused to order the production of documents, See Curling *v.* Perring, 2 M. & K. 380. Hughes *v.* Biddulph, 4 Russ. 190. Vent *v.* Pacey, 4 Russ. 193. Garland *v.* Scott, 3 Sim. 396.

(1) See former Eq.. R. 112 of 1829, and see Ld. Lynd. ord. 61, which adopts Prop. 79, Chan. Com. Rep.

(2) New Rule, not founded on any precedent.

latter case evidence to be taken down.

preserved in the Master's office, in order that the same may be used by the Court, if necessary: and if a commission be necessary, the same shall be issued by order of the Court or a Judge thereof, without motion upon certificate of the Master, that such commission is necessary, and such commission, and the depositions thereby taken, shall be returned into the Master's office sealed up, and shall be used by him as depositions taken before himself; and all interrogatories for examination of witnesses before the Master, or under any commission issued upon his certificate, shall be settled by him.

If commission necessary, how to be issued (1)

Interrogatories to be settled by Master.

Competent to Master on consent, to refer accounts to accountant,

13. And it shall be competent to the Master, if, from the nature or extent of the accounts directed to be taken, it be expedient so to do, to refer the same or any branch thereof, with the consent of the parties interested, to some accountant or other person; and the result of such account, as found by such accountant or other person, shall be stated by the Master in his report, in the same manner as if the account had been taken by himself; and it shall not be competent to any party to object to the said account before the Master, or to take exceptions to the report thereupon, or any other ground than such as they might have proceeded upon, if the account had been taken before the Master.

such accounts how to be stated in report

Not competent to any party to object to such accounts, except, &c. (2)

In cases of infants, lunatics, &c. Master may refer to accountant on consent of guardian, &c. (3)

14. That if such a reference is proposed in any suit or matter in which an infant, lunatic, or married woman, is a party concerned, then if the guardian, committee, or next friend of such person respectively, shall signify his consent, the Master shall consider and determine, whether, in

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(1) New Rule. See Ld Lynd. ord. 69, which adopts Prop. 92, Chan Com Rep

Under this order, held, that after warrants for passing publication and preparing report, Master could not receive further evidence, Trotter v. Trotter, 5 Sim. 383, and see Ld Lynd ord. 67.

This rule differs in some respects from the above order, and chiefly follows the Madras Equity Rule, 84.

(2) New Rule See Prop 82, Chan. Com. Rep not adopted in any new order of the Court of Chancery.

(3) New Rule. See Prop. 63, Chan. Com. Rep. not adopted in any new order of the Court of Chancery.

his judgment, it is for the benefit of such infant, lunatic, or married woman, that the account should be taken in the manner proposed; and if he shall be of opinion, that it will be for the benefit of such party, then he may refer the same accordingly.

15. That in all cases in which the Master shall think fit to make a reference of the nature here proposed, he shall state in his report his reasons for so doing, and in the cases of persons under disability, shall also state, that it was for their benefit to make such reference.

Master to state reasons for such reference, and that it was for party's benefit. (1)

16. That no exception to a Master's report upon matters of account, in respect of any item of account, be permitted, unless such single item, or several items depending on the same question, shall amount to four hundred rupees or upwards, or unless the Master shall think fit to certify, that the exception involves some principle of law or equity, which in his judgment renders it expedient that it should be considered by the Court.

No exception permitted, unless items amount to 400 rupees, or Master shall certify expediency of taking the opinion of Court. (2)

17. That if in any cause or matter depending on the equity side of the Court, witness being served with a summons to give evidence before the Master on any matters referred to him, shall refuse to come to be sworn, or being sworn, shall refuse to be examined, the party requiring his evidence shall be at liberty to apply to the Court if sitting or to a Judge thereof in vacation, (upon a certificate of the fact from the Master, and an affidavit of the service of the summons) for an order that the witness do attend within three days, to be examined, or in default thereof, that he be committed. And it is further ordered, that if the witness upon being duly served with the said order, do not pay due obedience to the same, he shall be committed forthwith. And it is further ordered, that copies (in the native language) of such part of this rule as relates to

Witness refusing to attend or to be sworn or examined before Master, may be ordered by Court or Judge to attend.

In default to be committed.

Copies of this rule to be affixed in Master's office, &c. (3)

(1) New Rule. See Prop. 84, Chan. Com. Rep. not adopted in any new order of the Court of Chancery.

(2) New Rule. See Prop. 85, Chan Com. Rep. not adopted in any new order of the Court of Chancery.

(3) See former Eq. R. 72, in part.

witnesses, be affixed at the Master's office, and at the usual places where notices are affixed

All the witnesses names to be inserted in one summons, if required. (1)

18. The names of any number of the witnesses, required by any one party to attend upon a reference before the Master, shall be inserted in one summons, at the request of the party.

Master not to require proof of any other notice than warrant or summons. (2)

19. The Master shall not in any case in which he issues a warrant or summons, require any proof of any other notice having been given to the party on whom the warrant or summons shall have been served; nor shall the taxing officer in such cases, upon the taxation of costs, allow any charge to be made for any notice.

Master not to charge attendance on swearing a witness, but only on swearing the defendant to answer. (3)

20. No attendance in any case shall be charged by the Master for swearing any witness, except where a party is to be sworn to an answer to a bill in equity; but the proper oaths in all other cases shall be administered by him, without any other fee or charge, than that which is provided by the table of fees, for every oath administered; and for swearing parties to answers, there shall be the further charge for attendances, as upon ordinary occasions, and nothing more.

Master may examine creditor, or claimant *viva voce*, or on interrogatories, or both. (4)

21. That the Master shall be at liberty to examine upon oath any creditor or other person coming in to claim before him, either upon written interrogatories, or vivâ voce, or in both modes, as the nature of the case may appear to him to require; the evidence upon such examination being taken down at the time by the Master or by a Clerk in his presence, and preserved, in order, that the same may be used by the Court, if necessary.

Master may require distinct Solicitors for each party. (5)

22. Whenever in any proceeding before the Master, the same solicitor is employed for two or more parties, such Master, may, at his discretion, require that any of

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(1) See former Eq. R. 116, of 1829.
(2) See former Eq. R. 104, of 1829.
(3) See former Eq. R. 117 of 1829.
(4) New Rule. See Ld. Lynd. ord. 72, which adopts Prop 95, Chan. Com. Rep.
(5) See former Eq. R. 115, of 1829, and see Ld. Lynd. ord. 77, which adopts Prop. 105, Chan. Com. Rep.

the said parties shall be represented before him by a distinct solicitor, and may refuse to proceed until such party is so represented.

23. Where the party, actually prosecuting a decree or order, does not proceed before the Master with due diligence, then the Master shall be at liberty on the application of any other party interested, either as a party to the suit, or as one who has come in and established his claim before the Master under the decree or order, to commit to him the prosecution of the said decree or order, and from thenceforth neither the party making default, nor his solicitor, shall be at liberty to attend the Master, as the prosecutor of the said decree or order. *(a)*

When party *actor* is negligent, Master may commit prosecution of decree to any party interested, and exclude defaulter and solicitor. (1)

24. That where some or one, but not all the parties do attend the Master at an appointed time, whether the same is fixed by the Master personally, or upon a warrant, there the Master shall be at liberty to proceed *ex parte*, if he thinks it expedient, considering the nature of the case, so to do.

When some, but not all the parties attend, Master may proceed *ex-parte*. (2)

25. That where the Master has proceeded *ex parte*, such proceeding shall not in any manner be reviewed in the Master's office, unless the Master, upon a special application made to him for that purpose by a party who was absent, shall be satisfied that he was not guilty of wilful delay or negligence, and then only upon payment of all

Ex-parte proceedings not to be reviewed but by leave of Master, and on payment of costs. (3)

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(1) See former Eq. R. 109, of 1829, and see Ld. Lynd. ord. 56, which adopts Prop. 73, Chan. Com. Rep ;—and see not (*a*) *infra*.

(2) New Rule. See Ld. Lynd. ord. 53, which adopts Prop. 70, Chan. Com. Rep.

(3) New Rule. See Ld. Lynd. ord. 54, which adopts Prop. 71, Chan. Com. Rep.

(*a*) Notwithstandig the Master may have refused an application under this rule to take the prosecution of a decree from the plaintiff, and commit it to another party, the Court is at liberty to grant the application, the Master's judgment not being final. Wyatt *v.* Sadler, 5 Sim. 450. Where great delay has occurred in the prosecution of a decree for the administration of assets, a creditor may apply to have the conduct of the cause, *though it has become abated by the death of the defendant*, Cook *v.* Bolton, 5 Russ. 282.

costs occasioned by his non-attendance; such costs to be certified by the Master at the time, and paid by the party, or his solicitor, before he shall be permitted to proceed on the warrant to review.

Where proceeding fails by non attendance, and Master deems it inexpedient to proceed *ex-parte*, Court will order absent party, or solicitor, to pay costs according to Master's certificate. (1)

26 That where a proceeding fails by reason of the non-attendance of any party or parties, and the Master does not think it expedient to proceed *ex parte*, there the Master shall be at liberty to certify what amount of costs, if any, he thinks it reasonable to be paid to the party or parties attending, by the absent party or parties, or by his or their solicitor or solicitors, as the Master in his discretion shall think fit, and upon motion or petition, without notice, the Court will make order for the payment of such costs accordingly.

Where inexpedient, or impracticable to proceed *ex-parte*, from default of party required to do act necessary to report, Court on Master's certificate will order him to do it, and commit if he do not. (2)

27. In all cases where it is not expedient or practicable for the Master to proceed *ex parte*, by reason of the refusal or neglect of a party to do some act required to be done, in order to enable the Master to make a report, the adverse party, upon notice, and the Master's certificate of the fact, may apply to the Court or a Judge, that the party served, do the act required within a certain time, or that a writ of attachment may issue against him on default: and in case of default, on affidavit of service, and the Master's certificate of the fact, an attachment shall issue, and the party shall remain in custody, until he has done the act in question, and cleared his contempt, on payment of costs.

Master, on application, to certify all proceedings had in his office, as briefly as he can. (3)

28. That upon any application made by any person to the Court, the Master, if required by the person making the application, shall, in as short a manner as he conveniently can, certify to the Court, the several proceedings which shall have been had in his office, in the same cause or matter, and dates thereof.

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(1) New Rule. See Ld. Lynd. ord. 55, which adopts Prop. 72, Chan. Com. Rep.

(2) New Rule. See Bombay Eq. R. 5.

(3) See former Eq. R. 110, of 1829, and see Ld, Lynd. ord. 57, which adopts Prop. 74, Chan. Com. Rep.

29. That when the Master has prepared his report, he shall give out a summons, to peruse and consider the same, and all parties shall attend him, who shall have liberty to peruse such his report, and shall take a copy thereof; and any party dissatisfied therewith, may, in four days next after such attendance, bring in a note in writing of the objections thereto, and take out a summons, to be heard thereupon, and then the Master is to settle and finish his report, as he shall find just.

On warrant to settle report, if objections made, to be brought in, in *four* days.(1)

30. When upon hearing exceptions to a report, it shall appear to the Court, that the party excepting did not offer his objections before the Master, in such case, though the exceptions shall be allowed, yet the party shall pay such costs as the Court shall think reasonable.

Where exceptions to report allowed, without previous objections, party excepting to pay costs. (2)

31. That where by special order, the Court shall admit exceptions to any report whereby money is reported due, after the time in which such exceptions should regularly have been filed, no proceedings upon such report shall be stayed, without giving security, or bringing the money reported due into the Court, unless the Court shall provide otherwise by special order.

If exceptions admitted *nunc pro tunc* where money reported due, no proceedings stayed, but on security, &c. unless otherwise ordered. (3)

32. That upon every general report, or report in the nature of a general report, made by the Master in the Court, in any cause or matter referred, the Master shall, at the foot of his report, certify whether the decree or order has been prosecuted, with reasonable diligence; and if he shall be of opinion that reasonable diligence has not been used, then he shall certify the ground of such opinion to the Court, making such observations thereon as he may think fit.

Master to certify in general report, whether decree or order prosecuted with diligence, and if he certify not, to give his reasons. (4)

33. That in all matters referred to him, the Master shall be at liberty, upon the application of any party

Master may make separate

(1) See former Eq. R. 58, of 1829.
(2) See former Eq. R. 58, of 1829.
(3) See former Eq. R. 58, of 1829.
(4) New Rule. See Prop. 75, Chan. Com. Rep. not adopted in any new order of the Court of Chancery.

reports at discretion. Costs with Court. (1)

interested, to make a separate report or reports, from time to time, as to him shall seem expedient; the costs of such separate reports to be in the discretion of the Court.

Where Master reports separately on debts and legacies, may certify state of assets. Parties may apply accordingly. (2)

34. That where a Master shall make a separate report of debts or legacies, there the Master shall be at liberty to make such certificate as he thinks fit with respect to the state of the assets; and every person interested shall, thereupon, be at liberty to apply to the Court, as he shall be advised.

All exceptions for scandal, or for insufficiency, to be referred to Master. (3)

35. All exceptions for scandal or impertinence in any pleadings, examinations, or interrogatories, or for insufficiency in any answers or examinations, shall by order of course be referred to the Master. (*a*)

No order for reference for *scandal* or *impertinence* unless exceptions, filed in one month from pleading, and order obtained in *six* days after filing. (4)

36. That no order shall be made for referring any pleading or other matter depending before the Court, for scandal or impertinence, unless exceptions are taken in writing, and signed by Counsel, and filed with the Equity Registrar, within one month from the filing of such pleading or other matter, describing the particular passages which are considered to be scandalous or impertinent, nor unless such order be obtained within six days after the filing of such exceptions.

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(1) See former Eq. R. 113 of 1829, and see Ld. Lynd. ord. 70, which adopts Prop. 93, Chan. Com. Rep.

(2) See former Eq. R. 114 of 1829, and see Ld. Lynd. ord. 71, which adopts Prop. 94, Chan. Com. Rep.

(3) New Rule.

(4) New Rule. See Ld. Lynd. ord. 11, which adopts Prop. 96, Chan. Com. Rep.;—and see note (*a*) *infra*.

(*a*) Each exception need not be confined to a single allegation, but if any part is held not impertinent, the whole exception will be held bad. Wagstaff *v.* Bryan, 1 R. & M. 30. It appears that *interrogatories* and *depositions* will not be referred for *impertinence alone* without scandal. White *v.* Fussell, 19 Ves. 113.

Statements in an answer to a bill of revivor which merely show irregularity and misconduct in the former proceedings in the suit are impertinent. Wagstaff *v.* Bryan 1. R. & M. 28. Devaynes *v.* Morris, 1 M. & C. 213. Metcalfe *v.* Metcalfe, 1 Keen. 74. See also cases as to impertinence, Beaumont *v.* Beaumont, 5 Madd. 51. Earl of Portsmouth *v.* Fellows. Ibid 450. 3 Swan. 232. n.

37. The time for delivering exceptions to an answer shall be two months from the filing of the answer, within which time, the exceptions in writing shall be delivered to the Sworn Clerk, and notice thereof, at the same time, given to the defendant's attorney, and there shall be no order in any case for delivering exceptions *nunc pro tunc.*

Time for excepting to answer 2 months, within which exceptions to be delivered, &c. No order *nunc pro tunc.* (1)

38. That if such defendant do, within eight days, after such notice, satisfy the complainant of the invalidity of those exceptions, or amend his answer within that time, or agree with the complainant or his attorney, to amend it accordingly, and pay his taxed costs, the complainant do then go on to reply; but if the defendant shall fail so to do, or put in a second insufficient answer, then that the complainant do within six days, refer such answer for insufficiency; and if the complainant do not refer the same within six days, after the expiration of the eight days, the exceptions shall be considered as abandoned by the complainant, and the answer shall be considered sufficient.

If defendant in *eight* days satisfy complainant of invalidity of exceptions or amend answer, &c. complainant to reply. If defendant fail or put in second insufficient answer, complainant to refer same in 6 days, if not, exceptions considered abandoned, and answer sufficient. (2)

39. That in case of examinations taken in the Master's office, being objected to as insufficient, the party shall, without an order, bring in his exceptions, which shall be argued before the Master, in like manner as upon references of answers for insufficiency; and the Master's decision thereon shall be final.

Where examinations in Master's office deemed insufficient, his decision on exceptions final. (3)

40. That the Master's report upon all references for scandal or impertinence, or for the insufficiency of answers or examinations, shall be final, and no exception shall be permitted to be taken thereto, unless the Master shall certify that it is a fit case for exception to the report, if the parties are so minded; and where the Master shall find any matter to be scandalous or impertinent, there the Master shall be at liberty to expunge the same without order; and in like manner, the Master shall be at liberty, without

Master's report of *scandal* or insufficiency, final, not to be excepted to unless on his certificate. Matter found, to be expunged by Master without order; He may tax costs thereof without order. (4)

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(1) See former Eq. Rs. 21 & 93. See also Prop. 9, Chan. Com. Rep.
(2) See former Eq. R. 21, and see Prop. 10, Chan. Com. Rep.
(3) New Rule. See Prop. 99, Chan. Com. Rep.
(4) New Rule. See Prop. 100, Chan. Com. Rep.

order, to tax the costs of scandal and impertinence, and of the insufficiency of any answer or examination.

If *first* answer determined insufficient, and *second* also to any of same points, double costs; on *third* answer insufficient, treble costs; and defendant to answer interrogatories, &c. (1)

41. That if the *first* answer be determined insufficient, and a *second* answer be put in, and be determined insufficient to any of the points formerly determined insufficient, the Master do award double the costs which were awarded upon the first insufficient answer; and that upon a *third* answer put in, and determined insufficient, the Master do award three times the costs which were awarded upon the first insufficient answer; and that upon such *third* answer being reported insufficient, such defendant be examined upon interrogatories to the points determined insufficient; and that he do stand committed, until he hath perfectly answered such interrogatories, and paid such costs.

If second or third answer not referred in 3 weeks, on old exceptions, to be deemed sufficient (2)

42. That if the plaintiff do not within three weeks, after a defendant's second or third answer is filed, refer the same for insufficiency, on the old exceptions, such answer shall thenceforth be deemed sufficient.

If referred, exceptions to be stated in the order. (3)

43. That if the plaintiff do refer a defendant's second or third answer for insufficiency, on the old exceptions, then the particular exception or exceptions to which he requires a further answer, shall be stated in the order.

If answer found insufficient, Master to fix time for further answer. (4)

44. That if upon a reference of exceptions, the Master shall find the answer insufficient, he shall fix the time to be allowed for putting in a further answer, and shall specify the same in his report, from the date whereof such time shall run.

If sufficient to be deemed so from date of report; on *submission*, insufficient from date thereof. (5)

45. That if upon a reference of exceptions the answer be certified sufficient, it shall be deemed to be so from the date of the Master's report; and if the defendant submit to answer without a report from the Master, the answer shall be deemed insufficient from the date of the submission.

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(1) See former Eq. R. 21.
(2) New Rule. See Prop 12, Chan. Com. Rep.
(3) New Rule. See Prop. 13, Chan. Com. Rep.
(4) New Rule. See Prop. 15, Chan. Com. Rep.
(5) New Rule. See Ld. Lynd ord. 9.

46. That when any order is made for referring an answer for insufficiency, or for referring an answer or other pleading, or matter depending before the Court, for scandal or impertinence, the order shall be considered as abandoned, unless the party obtaining the order shall procure the Master's report within a fortnight from the date of such order, or unless the Master shall, within the fortnight, certify that a further time, to be stated in his certificate, is necessary in order to enable him to make a satisfactory report, in which case, the order shall be considered as abandoned, if the report be not obtained within the further time so stated; And where such order relates to alleged insufficiency in an answer, such answer shall be deemed sufficient, from the time when the order is to be considered as abandoned.

Report on *insufficiency* of answer, *scandal* or *impertinence*, to be obtained in a fortnight or within further time certified by Master as necessary, otherwise order to be considered abandoned.

Where *insufficiency* alleged, answer deemed *sufficient* from such abandonment. (1)

47. That if any party wishes to complain of any matter introduced into any state of facts, affidavit or other proceeding before the Master, on the ground that it is scandalous or impertinent, or that any examination taken in the Master's office, is insufficient, he shall be at liberty, without any order or reference by the Court, to take out a warrant for the Master to examine such matter, and the Master shall have authority to expunge any such matter which he shall find to be scandalous or impertinent.

Master, without order, may issue warrant to examine into insufficiency of examination, or *scandal* or *impertinence* in any proceedings *in his office*, and expunge same. (2)

48. That all affidavits which have been previously made and read in Court upon any proceeding in a cause or matter, may be used before the Master.

Affidavits read in Court may be used before Master. (3)

49. That the defendant whose answer is excepted to, shall be allowed to take an office copy of the exceptions filed in the Sworn Clerk's office, and to make and charge for a close copy thereof; and that upon argument of exceptions before the Master, (whether he shall be attended by

Defendant allowed office copy exceptions and to charge close copy.

Complainant to use draft bill

(1) New Rule. See Ld. Lynd. ord 12, which adopts Prop. 96, Chan. Com. Rep.

(2) New Rule. See Ld. Lynd. ord. 73, which adopts Prop. 97, Chan. Com. Rep.

(3) New Rule. See Ld. Lynd. ord. 65, which adopts Prop. 88, Chan. Com. Rep.

and exceptions before Master with close copy answer. Defendant, copy bill exceptions and draft answer. Complainant to leave office copy answer with Master. Defendant copies bill and exceptions. When to be returned. (1)

Counsel, or otherwise) the draft of the bill and exceptions as settled by Counsel shall be used by the complainant, with a close copy of the answer, and the defendant shall use the close copy of the bill and exceptions, and the draft of the answer as settled by Counsel; and that at the time of taking out a warrant to proceed on the exceptions, the complainant shall leave with the Master, his office copy of the answer; and defendant upon being served with such warrant, shall forthwith leave with the Master, his office copies of the bill and exceptions, which shall be returned to the parties, at the time of signing the report.

On all references of exceptions to answers, &c. Master to require and minute parts of pleadings, &c. relied on. (2)

50. That in all references of exceptions to answers, or examinations for insufficiency, or references for scandal or impertinence before the Master, he do call upon the parties to state, on what parts of the pleadings or papers, they rely in argument, which the Master shall minute.

When Master certifies exceptions to his report proper to be heard by Court, he shall specify parts of pleadings, &c. relied on and minuted. (3)

51. That whenever the Master shall certify, that exceptions to his report, on a reference of answers, or examinations for insufficiency, or of any pleadings or other papers, for scandal or impertinence, are proper to be heard by the Court; he shall also specify in such certificate, the parts of the pleadings, or other papers, which were referred to in argument, minuted by him, and taken into consideration in framing his report.

RULES FOR THE OFFICE OF ACCOUNTANT GENERAL.

Monies and securities paid into Treasury to be entered in books to be kept between

1. All the monies and securities for money, which hereafter may be ordered by the Court to be paid, on account of any suit, into the hands of the Accountant General and Sub-Treasurer of the Company, shall be entered cause-

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(1) New Rule. See Madras Eq. R.;—and see *ante* 113, note (2).
(2) New Rule.
(3) New Rule.

wise in books to be kept between the Accountant General of the Court, and the Accountant General and the Sub-Treasurer of the Company; and books containing full and minute statements of the whole of the accounts in each cause, shall at all times be kept and carried on by the Accountant General of the Court at his office, and shall at all times within office hours, be open to the inspection of the suitors of the Court, or their attornies, upon payment of the regular fees.

Accountant General of Court and Accountant General and Sub-Treasurer of Company. Accounts in each cause to be kept by the former, open to inspection (1)

2. The Accountant General of the Court shall not meddle with the actual receipt of any of the monies or securities of the suitors, but shall only keep the account with the Accountant General and Sub-Treasurer of the Company; and, the Company being answerable for the monies and securities received by the Accountant General and Sub-Treasurer, or either of them, the Accountant General of the Court, observing the rules of the Court, shall not be answerable for any monies or securities which he shall not actually receive; unless it shall appear that any loss has been incurred by his wrongful or neglectful keeping of the accounts, or by any variance in his certificates from the orders of the Court, in respect of which they are given, or by his giving such certificates to other than the proper parties, in any of which cases, he shall be liable for all loss so incurred: and no person shall be admitted and sworn into the office of Accountant General of the Court, until he hath entered into a bond, with sufficient sureties, to the junior Justice thereof, in the penalty of Rs. 50,000, conditioned for the due execution of his said office.

Accountant General of Court not to meddle with the funds, only to keep accounts.

And, the Company being answerable for sums received, observing rules he shall not be answerable for funds not received by him. Unless loss by errors in his accounts, or certificates varying from orders of Court, or given to wrong parties.

To give security for due execution of his office. (2)

3. Whenever the monies, cash, or bank-notes, which are in the hands of the Accountant General and Sub-Treasurer of the Company, on account of any suit, amount to more than one thousand rupees, they shall be invested by them in the purchase of loan acknowledgments, or promissory notes of the Bengal Government.

Accountant General and Sub-Treasurer of Company to invest funds exceeding 1000 rs. in Government securities. (3)

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(1) See former Eq. R. 81, of 1827.
(2) See former Eq. R. 82, of 1827.
(3) See former Eq. R. 83, of 1827.

Acct. Genl. and Sub Treasr. to receive all interests on funds; and, deducting commission of Acct. Genl. of Court, credit each suit. (1)

4. The Accountant General and Sub-Treasurer of the Company, shall receive all interest accruing upon any securities which shall be in their hands, on account of any suit; and, after deducting therefrom the commission due to the Accountant General of the Court, shall enter the same in the account of each suit respectively.

Acct. Genl and Sub Treasr. to credit each suit with the amount of sums invested, specifying particulars of securities.

5. The Accountant General and Sub-Treasurer of the Company, upon investing any monies on account of any suit in the purchase of loan acknowledgments, or promissory notes of the Bengal Government, shall cause the same to be entered in the book or books kept by them with the Accountant General of the Court, to the account of the respective suits to which they belong, and shall specify the numbers, dates, and sums of such securities; and upon all securities which shall be in the hands of the Accountant General and Sub-Treasurer of the Company, on account of any suit, the name of the suit shall be indorsed.

Securities to be endorsed with name of suit. (2)

Acct. Genl. of the Court to receive *one* per cent. upon monies paid in, and 2½ on the interest thereof,

6. That, from the first day of January, one thousand eight hundred and thirty-seven, upon all monies ordered by the Court to be paid into the hands of the Accountant General of the Company, with the privity of the Accountant General of the Court, with the exception of all monies paid to the Accountant General of the Company by any officer of the Court, as receiver of any estate or property, or guardian of the property of any infant or lunatic, on which no commission or poundage is to be charged by the Accountant General of the Court, the commission of the Accountant General of the Court be one *per cent.* and upon all interest accruing upon money, ordered to be paid by the Court as aforesaid, two and a half *per cent.*

no commission on monies paid in by receivers or guardians (3)

Acct. Genl. and Sub-Treasr. to charge suitors per centage

7. That the Accountant General and Sub-Treasurer of the Company, shall charge the like per-centage on all

(1) See former Eq. R. 84, of 1827.
(2) See former Eq. R. 85, of 1827.
(3) New Rule.

agency for the suitors of this Court, as they would charge and are accustomed to charge, upon similar agency of any creditors of the Government.

for agency, as to other creditors of Government. (1)

8. Upon any money, or security for money, being taken under the care or direction of the Court, the form of the order or decree shall be, that it shall be paid or delivered to the Accountant General and Sub-Treasurer of the Honourable Company, with the privity of the Accountant General of the Court, to be placed to the credit of the suit; and all such orders shall be signed by one of the Judges of the Court; and the party or parties, or the attorney of the party or parties, who shall be ordered to pay or deliver the same, shall take out of the Register's office the order of the Court; and shall carry it to the Accountant General of the Court, who shall make an entry thereof in his books, and shall mark "*intratur*" at the foot of the order, and subscribe his name thereto, and by a certificate under his hand, shall specify the date of the order, and the monies or securities for money, which the said party or parties are to pay and deliver under such order, and the name of the cause to the account of which the same is to be placed, and he shall deliver the said order and certificate to the said party or parties, or attorney, who shall take the same, together with the monies or securities therein specified, to the Accountant General or Sub-Treasurer of the Company, who upon examining the said order and certificate, and receiving the said monies or securities, shall deliver to the said party or parties, or attorney, a certificate of his receipt of the same, signed with his hand, specifying the particulars of the monies or securities for money so received, and the said party or parties, or attorney shall carry the same to the Accountant-General of the Court, who shall make an entry thereof in his books, and file the same in his office of record, and shall give a certificate of the same, which the party shall forthwith file in the office of the Registrar of the Court.

Form of order or decree on bringing money or security into Court.

To be signed by a Judge.

Mode of proceeding by party ordered to bring in money.

Order to be shewn to Acct. Genl. of Court, who is to give certificate specifying particulars.

Order and certificate to be taken with money or security to Acct. Genl. and Sub-Treasr. who is to give receipt for the same to be filed with Acct. Genl. of Court.

And his certificate thereof to be filed with the Registrar. (2)

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(1) See former Eq. R. 86, of 1827.

(2) See former Eq. R. 87, of 1827.

Mode of proceeding on receiving money or security out of Court.

Order, counter signed by a Judge, to be shewn to Acct. Genl. of Court, who is to certify on the order amount to be paid, &c.

Party to give receipt for certificate.

And carry order to Acct Genl and Sub-Treasr.

And give receipt for amount.

Order, certificate, and receipt, sufficient voucher for payment. (1)

9. When any money or security for money is ordered by the Court to be paid or delivered out to any party or parties, they or their attornies shall carry such order, which shall be signed by the Registrar, and countersigned by one of the Judges, to the Accountant General of the Court, who shall enter the same in his books, and mark the order "*intratur,*" and having identified the parties, shall by a certificate under his hand, at the foot or on the back of the order, specify, with the utmost particularity, what monies or securities are to be delivered out, and the name of the suit in which the order has been made; and after having made an entry of such certificate in his books, shall deliver the same to the patry or parties, or attorney, who shall give a receipt for the same to the said Accountant General of the Court, and shall then carry and deliver the said order and certificate to the Accountant General and Sub-Treasurer of the Company, and upon receiving the monies or securities specified therein, shall give a receipt for the same to the Accountant General and Sub-Treasurer of the Company, which order, certificate, and receipt shall be a sufficient voucher and authority to the Accountant General and Sub-Treasurer of the Company, for paying or delivering the monies or securities specified in the said certificate, as also for writing off the same from the account kept by them with the Accountant General of the Court.

Decrees and orders for money to be drawn for payment to parties only, unless otherwise ordered, (2)

10. All decrees and orders, for the payment of money shall be drawn, for the payment of the money to the party or parties who shall be entitled to receive the same, and not to the parties or their attornies, unless otherwise ordered.

Where order or decree as to *periodical payments* out of fund in Court, or in hands of receiver,

11. That in future, when any order or decree shall be made, by which any person or persons shall become entitled to receive any periodical payments out of any fund in Court, or out of any monies to be received by any receiver appointed by the Court; or when any order or decree

(1) See former Eq. R. 88, of 1827.
(2) See former Eq. R. 91, of 1828.

shall be made, by which any such before mentioned order or decree shall be set aside, suspended, or in any wise varied in respect of any such periodical payments, an office copy of each and every such order, and an office copy of the ordering part of each and every such decree, shall be filed in the office of the Accountant General of the Court by the Registrar.

or where same varied, office copy thereof to be filed by Registrar with Acct. Genl. of Court. (1)

12. That six days before each period, at which any interest shall become due upon any fund in the hands of the Accountant General and Sub-Treasurer of the Company, out of which any such periodical payments have been or shall hereafter be ordered to be made, the Accountant General of the Court shall give a written notice to the Accountant General and Sub-Treasurer of the Company, of the several sums which it will be necessary to retain in cash, for the purpose of making such payments, before the next interest will become due, and the Accountant-General and Sub-Treasurer of the Company shall retain the same in cash accordingly; and the Accountant General of the Court, in like manner as occasion may require, shall give written notices to the Accountant General and Sub-Treasurer of the Company, of the several sums, which it will be necessary, for the like purposes, to retain in cash out of any fund in Court, or any balances paid or to be paid into the hands of the Accountant General and Sub-Treasurer of the Company, by any receiver of estates appointed by the Court, and the Accountant General and Sub-Treasurer of the Company shall retain the same accordingly: Provided always, that if any sum so retained in cash as aforesaid, shall not be duly claimed and taken out of the hands of the Accountant General and Sub-Treasurer of the Company, within six months from the time of its being received by them, it shall be their duty to deal with it, as if no such notice as is aforementioned had been given to them respecting it.

Acct. Genl. of Court to give six days notice, before interest due, to Acct. Genl. and Sub-Treasr. of periodical payments out of interest which will become due on funds in his hands, who is to retain the same in cash.

Like notices to be given to retain sums, for like purposes, out of funds paid in by Receiver, and same to be retained accordingly.

Proviso.

Where sums not claimed within six months to be dealt with as if no notice given. (2)

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(1) See former Eq. R. 92, of 1828.

(2) See former Eq. R. 93, of 1828.

Where party entitled to such periodical payments, Acct. Genl. of Court to give him a cheque on the Acct. Genl and Sub-Treasr. who, if he has received due notice and has cash, is to pay the same, without any other order. (1)

13. That in all cases in which any person or persons now are, or hereafter shall have become entitled to any such periodical payments in manner aforesaid, the Accountant-General of the Court, upon the application of the party or parties, shall give a cheque or order for the same upon the Accountant General and Sub-Treasurer of the Company, in favour of such party or parties; and the Accountant General and Sub-Treasurer of the Company, in every such case, if they shall have received such notice, as is above mentioned, to retain cash for the purpose of paying the cheque or order, and shall then have a sufficient sum ready in their hands for that purpose, shall take and keep the cheque or order, and shall pay the amount specified therein, without requiring the production of any other order, document, or voucher.

No fee payable for such acts to the Acct. Genl. of Court, who is responsible for loss by giving cheque to wrong party and for due compliance with the order of the Court,

14. The Accountant General of the Court shall not demand or receive any fee whatever, for or in respect of any thing which, by the three next foregoing rules, is directed to be done; and the Accountant General of the Court shall be responsible for any loss which may be incurred by his delivering any such order or cheque as aforesaid, to any person not entitled to receive the same, and for any other thing, which by him may be done or ordered, contrary to the true intent and meaning of any order of the Court, of which he shall have had notice; and in case the said Accountant General of the Court shall entertain doubts, as to the true intent and meaning of any order, under which he shall be called upon to act, in pursuance of these rules, it shall be lawful for him, instead of giving a cheque or order as aforesaid, to require the party or parties to make an application to the Court, or to some Judge thereof, for the purpose of receiving directions respecting the same.

and may require party, in case of doubt, to apply to the Court, or a Judge. (2)

Acct. Genl. of Court to file

15. The Accountant General of the Court shall file a schedule in the Court, in the first and third terms of each

(1) See former Eq. R. 94, of 1828.

(2) See former Eq. R. 95, of 1828.

year, containing an exact statement of the balance of the account in each suit, and the Accountant General and Sub-Treasurer of the Company, once in each year, shall do the like.

Schedule of balances twice a year. Acct. Genl. and Sub-Treasr. once a year. (1)

16. All the books of the Accountant-General of the Court, as well those in which orders and certificates are entered, as those in which the accounts are kept, shall be at all times open, during office hours, to the inspection of the suitors or their attornies, upon paying the established fees.

All books of Acct. Genl. of Court to be open to inspection. (2)

17. That no monies shall be received and paid by the Master, but shall be received and paid by the Accountant-General and Sub-Treasurer of the Company, with the privity of the Accountant General of the Court; and no other commission or poundage shall be charged thereon, but that which is allowed to the Accountant-General of the Court.

Acct. Genl. and Sub-Treasr. and not Master to receive and pay all monies. No commission charged but by Acct. Genl. of Court. (3)

18. That no motion be made to receive money out of Court, without a certificate from the Accountant General, of the state of the accounts between the parties, first being had and obtained.

Motions to take money out of Court. (4)

19. No application for an order for the payment or delivery of any monies, securities, or effects out of Court, shall be made before a Judge in Chambers, or otherwise than in open Court, unless upon affidavit by the party applicant, or his attorney, stating circumstances which shall satisfy the Judge that injury, or serious inconvenience, would arise to the party entitled, in case such application were delayed until the ensuing term.

All applications for money, &c. to be made to Court and not to Judge, unless otherwise ordered on special grounds. (5)

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(1) See former Eq. R. 89, of 1827.

(2) See former Eq. R. 90, of 1827.

(3) See former Eq. R. 100, of 1824.

(4) See former Eq. R. 67, of 1795.

(5) See Madras Money R. 3.

RULES FOR RECEIVERS AND GUARDIANS.

How guardians of infants to be appointed.

1. That all applications for the appointment of guardians of infants, be made by petition, and that in all orders for the appointment of such guardians, there be a clause inserted, that the persons so applying do enter into security, by recognizance, before the Master of this Court, in such sum as the said Master shall require, to account yearly upon oath before the Master, for all receipts and disbursements out of such estates, and at all such other times as the said guardians shall be called upon by the Court so to do; and further, that when any petition for appointing a guardian is referred to the Master, the party presenting the same shall lay before him a state of facts, supported by affidavit, stating the age of the infant, the nature and amount of his property, what relations he has by the father's and mother's side, and the degree of relationship between the proposed guardian and the infant; and on every such petition, the Master shall report, stating all these particulars, and the grounds upon which he approves or disapproves of any persons so applying; and finally, it is ordered, that every guardian, who may be appointed under such report of the Master, shall collect the effects of the infant as expeditiously as possible, and convert the same into money, and without delay pay the same into the hands of the Accountant General and Sub-Treasurer of the East India Company, with the privity of the Accountant-General of this Court, to be placed to the credit of the infant.

To give security to account yearly, or oftener, if required by Court.

On reference, state of facts to be verified by affidavit.

What to contain.

Master to report on all such particulars, and the grounds on which he approves or disapproves of guardian proposed.

Guardian to collect and convert effects into money, and pay same into Court without delay. (1)

2. No bill in equity shall be filed on behalf of any infant, without leave previously obtained from the Court, or a Judge in Chambers, upon special affidavit, stating the circumstances and reasons, which make it for the benefit of the infant, that the suit should be instituted.

No bill to be filed for an infant except by leave of Court or Judge, on affidavit stating why it is for infants' benefit. (2)

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(1) See former Eq. R. 68;—Madras Eq. R. 99, in substance, and Bombay Eq. R. *tit.* "Guardian."

(2) See former Pl. R. 104. former Eq. R. 95, of 1820;—and see note, *(a) infra.*

(a) This rule is peculiar to this Court. In Courts of Equity in England any

3. It is ordered, that where any suit is commenced in this Court, either at law or in equity, by any guardian *ad litem* or next friend on behalf of an infant, if a judgment or decree shall be obtained by the plaintiff or complainant in such action or suit, that no writ or execution shall be issued thereon, nor any satisfaction of the said judgment or decree be entered on the roll, or otherwise acknowledged, or any sum of money on account thereof be received, nor any other thing in satisfaction or in part satisfaction thereof, be taken by the said guardian, or next friend of the said plaintiff or complainant, until he shall have given security to the satisfaction of the Court, or in vacation to a Judge thereof, that the amount to be received by, or other thing to be delivered to him, the said guardian, or next friend, shall be faithfully accounted for to, and held for the benefit of the said infant; And in case the said guardian or next friend shall not be ready with his said security, upon the passing of the said judgment or decree, that then, and in such case, the attorney for the said plaintiff or complainant shall give notice thereof to the Sheriff of the town of Calcutta, who is hereby ordered to apply to the said Court for liberty to sue out execution on the said judgment, or decree, on behalf of the said infant; And it is further ordered, that the money or other thing recovered by the said Sheriff, under the said execution, shall be paid or delivered over by him to the Accountant General of this Court, who is hereby ordered to keep and apply the same to the use and benefit of the said infant, in such manner as he now keeps and applies money and other properties of infants; And it is further ordered, that after the appointment of such guardian or next friend, no sum of money or other thing

Where judgment or decree for infant plaintiff or complainant, no execution to issue nor satisfaction entered, or sum received by guardian or next friend, until security given for duly accounting for same.

If security not ready, attorney to give notice to Sheriff, who shall apply to the Court for liberty to sue out execution.

Money recovered to be delivered over to Acct. Genl. of Court, who shall apply the same to the infants' use, as in other cases.

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person may institute a suit on behalf of an infant, and he is styled *the next friend* and named as such in the bill; but as some check to the general license to institute a suit on behalf of an infant, the Court will, if it is represented that a suit preferred in his name is not for his benefit, desire an inquiry to be made by one of the Masters, as to whether the suit is for his benefit; and if the Master reports it is not, the proceedings will be stayed. So, if two suits are instituted in his name by different persons each acting as his next friend, an enquiry will be directed as to which suit is most for his benefit. DaCosta *v.* DaCosta, 3 P. W. 140. Lord Red. 20-21.

Before judgment or decree, not to receive money or other thing on infants' behalf until security given;

shall be taken or received by him at any time before judgment or decree on behalf of the said infant, until he shall have given security as aforesaid; And if, before judgment or decree any sum of money, or other thing, shall be offered by the defendant or defendants in such action or suit, to be paid or delivered to the said guardian or next friend, on behalf of the said infant, it is ordered, that he shall immediately report the same to the said Accountant General, who is hereby directed to report the same to the Court, or in vacation, to a Judge thereof, in order that inquiry may be made for the purpose of ascertaining whether or not the acceptance of the said offer will be for the benefit and advantage of the said infant; And all such guardians and next friends are hereby strictly prohibited from entering into any agreement or compromise on behalf of the said infant, and from doing any act by which the interest of the said infant may or can be affected, without reporting the same to the said Accountant General, in order that such inquiry may be made as is aforesaid.

and if offered, to report same to Acct. Genl. who will report to Court or Judge for inquiry.

Not to compromise without reporting to Acct. Genl. (1)

4. All receivers of estates, (except in cases where the officer of the Court is appointed receiver,) as mentioned in the sixth rule, and committees of the estates of idiots, lunatics, and managers of any estate or property for the purpose of giving effect to any charitable bequest, shall pass their accounts upon oath before the Master once in every year; but the Master shall be at liberty, upon the appointment of any such receiver, committee, or manager at any time subsequent thereto, in the place of annual periods for the passing such accounts, to fix either longer or shorter periods, at his discretion; and the Master shall, upon the passing of such accounts, fix the days on which such receiver, committee, and manager, shall pay the balances appearing due on their accounts into Court; And with respect to such receivers, committees, or managers, as shall neglect to pass their accounts or to pay the balances thereof at the ordinary annual periods, or at such other

Receivers, committees and managers of charities, how to pass their accounts.

On oath *once a year;*

or as Master may direct;

And pay in balances.

If default in either case,

(1) See former Pl. R. 104.

period, as shall be, by virtue of this rule, fixed for that purpose, the Master shall, from time to time, when their subsequent accounts are produced to be examined and passed, not only disallow the commission or salaries therein claimed by such receivers, committees, or managers, but also charge interest at six per cent. per annum, upon the balances so neglected to be paid by them during the time the same shall appear to have remained in their hands respectively; And the Master shall report on the first day of the second and fourth terms in each year, which of the said receivers, committees, and managers, respectively have not duly passed their accounts, or paid in their balances.

Master to disallow commission and charge interest on balances.

To report defaulters in 2nd and 4th Terms. (1)

5. In every order directing the appointment of a receiver of a landed estate, (except in cases where the officer of the Court is appointed receiver) there shall be inserted a direction, that such receiver may set and let, with the approbation of the Master, and not otherwise; And that in acting under such an order, it shall not be necessary that a petition be presented to the Court in the first instance, but the Master, without special order, shall receive any proposal for the setting or letting of the estate from the parties interested, and shall make his report thereon; which report shall be submitted to the Court for confirmation, in the same manner as is now done with respect to reports in such matters made upon special reference; and until such report be confirmed it shall not give any authority to the receiver.

Orders appointing receiver, other than officer, to contain power to let with sanction of Master, and not otherwise.

Master may, without special order, receive proposals and report thereon, to be confirmed, and then receiver may act. (2)

6. In all cases in which it shall be referred to the Master, to inquire and report, who is a fit and proper person to be the receiver of any estate and property, or guardian of the property of any infant, or manager of any estate or property, for the purpose of giving effect to any charitable bequest, the Master shall also inquire and report what will be a proper commission or salary to be allowed; And whenever, for want of any

In all references as to receivers, &c. besides stating who is a fit person, Master shall also inquire and report what commission or salary is proper.

When officer

(1) See Madras Eq. R. 100.

(2) See Madras Eq. R. 101.

of Court is appointed receiver, he shall account *half-yearly*;

other proper person who is willing to undertake any such duty, it shall become necessary to name the officer of the Court, who shall have been nominated by the Court to be receiver of estates, the said officer shall pass his accounts half yearly before the Master, in such manner as any other receiver, manager, or guardian ought to do, once in the year; and in like manner, as other receivers are required to do upon passing their accounts, he shall pay all monies into the hands of the Accountant General and Sub-Treasurer of the Company, with the privity of the Accountant General of the Court; and the Master in equity is required to report any default of the officer in these respects, in like manner as by the *fourth* Equity Rule he is required to report the default of other receivers.

and pay balances into Court.

Master to report default.(1)

BILLS AND OTHER PLEADINGS.

Bills and other pleadings to be filed with Sworn Clerk, who is to enter names of parties and date of pleadings filed.

1. That all bills, answers, pleas, demurrers, rejoinders, replications, and exceptions to answers, be filed with the Sworn Clerk, who shall keep a book, in which he shall fairly enter the names of the plaintiff and defendant in each cause, together with the day and year, on which any pleading shall be filed in his office; and that the Registrar do not issue any subpœna to appear and answer, unless a certificate be produced to him, under the hand of the Sworn Clerk, that a bill has been filed in his office, &c.

No subpœna to appear to issue, without certificate of bill filed. (2)

Bills and other pleadings, interrogatories and exceptions, to be signed by an advocate. To be concise and not argumentative, &c. (3)

2. That all bills, answers, pleas, demurrers, replications, rejoinders, or other pleadings, interrogatories, and exceptions, filed in this Court, be signed by an advocate; and be as short and concise as the nature of the case will admit; not argumentative, or stuffed with scandalous or

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(1) See former Eq. R. 120, of 1829.

(2) See former Eq. R. 4;—and see Bea. ord. Chan. 168, n. 12.

(3) See former Eq. R. 7;—and see Bea. ord. Chan. 25, 69, 165, Ld. Bac. ord. 55, 56, Ord. Ld. Keep. Cov. 1635, Ld. Clar. ord, 2.

impertinent matter, upon pain of having such scandalous or impertinent matter expunged.

3. That no copy of any bill, answer, plea, demurrer, replication, rejoinder, exceptions, interrogatories, depositions, or other papers or records filed in any office on the equity side of this Court, be delivered or sent to any client or attorney, or other person, until the same be signed by the person, out of whose office the same shall issue; and that no close copy shall be made, until an office copy shall have been paid for.

No office copy bill, pleading or record to be issued till signed.

No close copy till office copy paid for. (1)

4. That no bills, answers, commissions, decrees, dismissions, or other pleadings, or records whatsoever, shall be carried to be engrossed, enrolled, or copied, or otherwise used by any of the under clerks, out of the office to which the same shall belong, and as soon as any clerk shall have engrossed, enrolled, copied, or otherwise used any such bill, answer, or other pleading, decree, dismission, or record, in the said office, he shall bring the original thereof presently back to such office, to whom the custody thereof doth belong, for the more safe custody or keeping thereof.

No bills, commissions, decrees or other pleadings, or records, to be carried out of office to be engrossed or used. (2)

5. That the complainant, upon motion as of course, before or after an appearance to his bill, and before an answer comes in, shall have liberty to amend his own bill, without payment of costs to the defendant, and on terms of amending the defendant's office copy of such bill gratis after appearance.

Amendment of course before or after appearance and before answer, without costs, amending gratis. (3)

6. That after an answer has been filed, the plaintiff shall be at liberty before filing a replication, to obtain upon motion or petition, without notice, one order for

Amendment after answer and before replication.
One order of course.

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(1) See former Eq. R. 11;—and see Bea. ord. Chan. 67, 108, 110, Ld. Bac. ord. 67, Ld. Manch. ord. 1, 5, A. D. 1646.

(2) See former Eq. R. 12;—and see Ld. Manch. ord. 6. Bea. ord. Ch. 111.

(3) See former Eq. R. 13;—and see Ld. Lynd. ord. 13, 14, 15, Ld. Brough. ord. 13, amending Ld. Lynd. ord. 13, and Props. 27, 28, 29, 30, 31, 32, 33, 34, Chan. Com. Rep.

On further order.

Affidavit requisite by plaintiff and solicitor, or solicitor if plaintiff unable to join, that draft of amendments settled by Counsel, and material.

All such applications to be made within six weeks after answer deemed sufficient.

Not to extend to amendments as to clerical errors. (1)

leave to amend the bill; (*a*) but no further leave to amend shall be granted after an answer, and before replication, unless the Court shall be satisfied by affidavit, that the draft of the intended amendments has been settled, approved, and signed by Counsel; and that such amendments are not intended to be made for the purpose of delay or vexation, but because the same are considered to be material to the case of the plaintiff; such affidavit to be made by the plaintiff, or one of the plaintiffs, where there is more than one, and (*b*) his, her, or their solicitor, or by such solicitor alone, in case the plaintiff or plaintiffs, from being abroad or otherwise, shall be unable to join therein; but no order to amend shall be made after answer, and before replication, either without notice, or upon affidavit in manner hereinbefore mentioned, unless such order be obtained within six weeks after the answer, if there be only one defendant, or after the last of the answers if there be two or more defendants, is to be deemed sufficient (*c*). But this order shall not extend to amendments, which are made only

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(1) New Rule. See Ld. Brough. ord. 13, amending Ld. Lynd. ord. 13 of 1828;—and see notes *(a) (b)* and *(c) infra.*

(*a*) Lord Lyndhurst's order has been held not to extend to a second amendment, the first having been made before the order came into operation. Leith *v.* Wildman, 3 Sim. 101. It was held to apply to a second amendment though before answer. Tarleton *v.* Dyer, 1 R. & M. 1. But see Hand *v.* Green, 3 Sim. 152 note. Bird *v.* Hustler, 1 R. & M 325. It has been held that generally an affidavit and notice could not be dispensed with. Freame *v.* Best, 3 Sim. 152 S. C. 1 R. & M. 79. But in the case of formal amendments, notice has been dispensed with. Smith *v.* Evans, 1 R & M. 80, and see Cottingham *v.* Potts, Ibid. 81. So in the case of amendments after exceptions allowed, Mendizabel *v.* Hallett, 1 R. & M. 324, S. C. 3 Sim. 152 note. Bird *v.* Hustler, 1 R. & M. 325, *ante.* So in case of amendment after demurrer allowed. Pesheller *v.* Hammett, 3 Sim. 389. So in case of amendment after replication withdrawn. Wharton *v.* Swann, 2 M. & K. 362, and note to rule 7. *post.* In Evans *v.* Hughes, 5 Sim. 666. It was held that the order did not apply after a new defendant had been made a party by amendment. But the contrary was held in the Attorney-General *v.* Nethercoat, 2 M. & C. 604. Where the order applied, notice as well as an affidavit, was held necessary. Bird *v.* Hustler, 1 R. & M. 325, *ante.*

(*b*) The word "or" was used in Ld. Lynd. order, but was construed "and." See Brown *v.* Dunn, 3 Sim. 23.

(*c*) This part of the order does not apply to defendants out of the jurisdiction. King of Spain *v.* Hullett, 3. Sim. 338, S. C. 1 R. & M. 7, note.

for the purpose of rectifying some clerical error, or error in names, dates or sums in which cases the order to amend may be obtained upon motion, or petition, without notice.

Amendment after replication.

7. That after a replication has been filed, the plaintiff shall not be permitted to withdraw it, and amend the bill, without a special order of the Court made upon motion, of which notice has been given; the Court being satisfied by affidavit that the matter of the proposed amendment is material and could not, with reasonable diligence, have been sooner introduced into the bill. (*a*)

Notice and special order, affidavit of materiality and due diligence. (1)

Order for leave to amend, to contain undertaking to amend, in 3 weeks otherwise void. (2)

8. That every order for leave to amend the bill, shall contain an undertaking by the plaintiff to amend the bill, within three weeks of the date of the order; and in default thereof, such order shall become void, and the cause shall, as far as relates to any motion to dismiss the bill for want of prosecution, stand in the same situation as if such order had not been made.

Subpœna not required after amendment. (3)

9. That in no cases of amendment shall a fresh subpœna be required.

When amendment otherwise than by alteration of names, dates, &c.

Defendant to have 8 days time to answer further, though not required by plaintiff. (4)

10. That where the plaintiff obtains an order to amend, without requiring any further answer, and shall amend the bill any otherwise than by an alteration of names, dates, sums or the corrections of clerical errors only, the defendant shall, as of course, have eight days time to consider whether it is necessary for him to answer the same, at the end of which time, the plaintiff shall be at liberty to file a replication, or set down the cause for hearing on bill and answer, unless the defendant shall have previously served

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(1) New Rule. See Ld. Lynd. ord.15, which adopts Prop. 17, Chan. Com. Rep.;—and see note, (*a*) *infra*.

(*a*) Held in Wharton *v.* Swann, 2 M. & K. 362. That after a replication had been filed and the plaintiff had, on special leave, amended his bill in such a manner to call for an answer, he might afterwards obtain, *as of course*, a further order to amend at any time before the answer to the amended bill was put upon the file. This rule does not apply to an amendment *by adding parties only*. Brattle v. Waterman, 4 Sim. 125. A plaintiff may amend by adding parties after replication *without withdrawing it*.

(2) New Rule. See Ld. Lynd. ord. 14, which adopts Prop. 19, Chan. Com. Rep.

(3) New Rule.

(4) New Rule. See Ld. Brough. ord. 14, of 1833.

If further time not obtained, plaintiff may reply or set down cause.

an order, which he shall obtain of course, for time to answer such amended bill, in which last case, the Court may allow the defendant such time, for that purpose as it shall think fit.

No amendment after demurrer set down for argument but on payment of costs.(1)

11. That the complainant shall not be at liberty to amend his bill, after a demurrer is set down in the paper to be argued, without paying the costs of such demurrer.

Bill for discovery or relief touching lost deed, to be verified by affidavit.(2)

12. That where any bill shall be brought in Court for discovery and relief, touching any deed or instrument suggested to be lost, the complainant shall be obliged to annex an affidavit to such bill, verifying such loss, before the defendant or defendants shall be compelled to answer thereto.

In supplemental suit no examination to points in issue before. (3)

13. That if any supplemental bill shall be moved for, after publication passed, (unless it be a matter of account,) nothing be examined to, that was in issue in the former cause.

Time for *answering* in *town* cause, or within 100 miles of Calcutta, 8 weeks.

In country causes 12 weeks, exceeding 500 miles 15 weeks.

For *demurring* in *town* causes or within 100 m. 3 weeks.

In country causes 6 weeks, exceeding 500 m. 7 weeks.

Time in *all* cases to run from service of subpœna.

How and when further time

14. The time for answering or pleading to a bill in equity shall be eight weeks, if the defendant resides in Calcutta, or within one hundred miles thereof, and if he resides beyond that distance and within five hundred miles thereof, twelve weeks, and if at a distance exceeding five hundred miles, fifteen weeks; the time for demurring to a bill in equity shall be three weeks, if the defendant resides in Calcutta, or within one hundred miles thereof, and if he resides beyond that distance, and within five hundred miles thereof, seven weeks, and if at a distance exceeding five hundred miles, ten weeks; the time allowed to be calculated, in all cases, from the day of service of the subpœna: and no further time shall be given, unless on motion or petition, grounded upon a very special cause, verified by affidavit, to the satisfaction of this Court, if then sitting, or one of the Justices thereof, in time of vacation; of which motion or petition notice shall be given to the attorney on the

(1) See former Eq. R. 19.

(2) See former Eq. R. 18.

(3) See former Eq R. 14, and see Prop. 109, Chan. Com. Rep.

part of the complainant, previous to the expiration of the time before granted to such defendant to answer, plead, or demur; and in case the Court, or any Justice thereof, shall think proper to grant further time, then such defendant shall undertake to enter an appearance in four days, should he not have done so previously, and shall in all cases consent to put himself in the same situation, and submit to the same process, as if a commission of rebellion were returned, *non est inventus*, in case he do not file his answer, plea, or demurrer, on or before the expiration of the time so granted.

to be applied for.

Terms on granting further time.

In all cases consent to stand as if commission of rebellion returned, *non est inventus* (1)

15. That all further or supplemental answers be filed in ten days after exceptions to the original have been allowed, or leave to file such supplemental answer has been obtained, unless further time shall be given to put in the same, upon application to the Court if sitting, or to a Judge thereof in vacation.

Further answers when to be filed. (2)

16. That when a defendant, in contempt for want of answer, obtains, upon filing his answer, the common order to be discharged as to his contempt on payment or tender of the costs thereof, or the plaintiff accepts the costs without order; he shall not by such acceptance be compelled, in the event of the answer being insufficient, to recommence the process of contempt against the defendant, but shall be at liberty to take up the process at the point to which he had before proceeded. *(a)*

When contempt for want of answer discharged on payment of costs, and answer insufficient, process of contempt need not be commenced *de novo*, but taken up at former stage. (3)

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(1) See former Eq. R. 9, and R. 92, of 1829, modified, and now nearly a new Rule; and see Ld. Brough. ord. 10, of 1833, also Props. 4, 5, 7, 8, Chan. Com. Rep.

(2) See former Eq. R. 10; now amended.

(3) New Rule. See Ld. Lynd. ord. 24, of 1831, Ld. Brough, ord. 24, of 1833, Prop. 39, Chan. Com. Rep.; — and see note *(a) infra*.

(a) Mr Beames makes the following observations on Prop. 39, of Chan. Com. Rep. " If a defendant is in contempt for want of an answer, and then files his answer, he is entitled to an order to be discharged out of custody, upon payment, or, tender of the costs of contempt, (Ord. Ch. ed. Beam, 200,) but if the plaintiff accept those costs, he cannot, should the answer eventually prove insufficient, resume the process were it left off, but must begin *de novo*. This seems to be contrary to the order of 1676, which provides, that, in case any former process of contempt shall have issued against such defendants, for want of appearing, or, answering, the plaintiff may resort back to such process of contempt and proceed thereupon, &c. notwithstanding the costs of such former process were paid upon the

Mode of taking *bill pro confesso* against defendant, not served with subpœna, who does not appear and absconds to avoid service. (1)

17. That in case any defendant against whom a bill shall be filed in this Court, and process shall issue, shall not cause appearance to be entered upon such process, within such time, and in such manner, as, according to the rules of the Court, the same ought to have been entered, in case such process had been duly served, and an affidavit shall be made, to the satisfaction of the Court, that such defendant is beyond the sea, or, that upon inquiring at his usual place of abode, he could not be found so as to be served with such process, and that there is just ground to believe that such defendant is gone out of the jurisdiction of this Court, or has otherwise absconded, to avoid being served with the process of this Court; and that such defendant hath resided within the jurisdiction of the Court within one year before the issuing of the subpœna, and that he is, and how he is, subject to the jurisdiction of the Court, then, and in such case, the complainant may have an order, directing and appointing such defendant to appear at a certain day therein to be named, and a copy of such order, signed by the Equity Registrar of this Court, shall within *fourteen* days of such order, be stuck up in the Court-house, and on the outside of the said Court-house door, and be left at the house where such defendant made his usual place of abode within *thirty* days next before such his absenting, unless it shall appear by affidavit, that due inquiry and search have been made, and that such place of his abode cannot be found, and a copy of such order shall be inserted in one of the Calcutta newspapers, and the said defendant shall be three times publicly called and proclaimed in the said Court (the Court sitting) or three successive Mondays; and in case such defendant shall not appear within the time limited by the said order, or within

Proclamations on three successive Mondays.

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coming in of such insufficient, or, frivolous answer. (Bea. Ord. Ch. 249). As it must occasion delay to an innocent party to compel him to begin the process *de novo*, and the circumstance of his accepting those costs, which the rule of Court gives him, is any thing but a satisfactory reason why he should be actually punished, by being put to the inconvenience of commencing his process again, it seems expedient to revive the order of 1676, and that the plaintiff should resume the process where he left off, in case he has occasion again to resort to it, in consequence of the answer proving insufficient"

(1) See former Eq. R 16, altered in conformity with Stat, 5, G, 2 c, 25.

such further time as this Court shall think proper to grant, on proof made of such publication, and proclamations as aforesaid, the complainant's bill shall, as against such defendant be taken *pro confesso,* and the Court may make such decree thereupon as shall be thought just, and may thereupon issue process to compel the performance of such decree, either by an immediate sequestration of the real and personal estate and effects of the party, so absenting, (if any such can be found) or such part thereof, as may be sufficient to satisfy the demands of the plaintiff, or by causing possession of the estate and effects demanded by the bill to be delivered to the plaintiff, or otherwise as the nature of the case shall require; and the said Court may likewise order such plaintiff to be paid and satisfied his demands out of the estate and effects so sequestered, according to the true intent and meaning of such decree, such plaintiff first giving sufficient security, in such sum as the Court think proper, to abide such order touching the restitution of such estate or effects, as the Court shall think proper to make concerning the same, upon the defendants appearance to defend such suit, and paying such costs to the plaintiff as the Court shall order; but in case such plaintiff shall refuse or neglect to give such security as aforesaid, then the said Court shall order the estate and effects, so sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the Court, either by appointing a receiver thereof, or otherwise, as to the Court shall seem meet, until the appearance of the defendant to defend such suit, and his paying such costs to the plaintiff, as the Court shall think reasonable, or until such order shall be made therein as the Court shall think just.

Decree *pro confesso.*

Sequestration of real and personal estate.

or Writ of possession.

Order for satisfaction thereout, on security given by plaintiff to abide order on appearance.

If he refuse to give security, property to remain under direction of Court until appearance.

18. If any decree shall be made pursuant to the next foregoing rule, against any person being out of the jurisdiction of the Court, or absconding in manner aforesaid, at the time such decree is pronounced, and such person shall within seven years after the making such decree, return, or become publicly visible, then, and in such case, he shall be served with a copy of such decree, within a reasonable time after his return or public

Where such *decree ex-parte,* and defendant return within 7 years to be served therewith,

And in case of death within 7 years and estate sequestered heir or representative, to be served with copy, within reasonable time after notice of death. (1)

appearance shall be known to the plaintiff; And in case any defendant against whom such decree shall be made, shall, within seven years after the making of such decree, happen to die before his return into the jurisdiction of the Court, or appearing openly as aforesaid, or shall within the time last before mentioned die in custody, before his being served with a copy of such decree, and if the estate of such defendant be sequestered, or possession thereof delivered to the plaintiff, then, his heirs, executors or administrators, or representative, (if any such there be) or if such heir or representative be a *femme covert*, infant, or *non compos mentis*, the husband, guardian, or committee of such heir or representative, may, and shall be served with a copy of such decree, within a reasonable time after it shall be known to the plaintiff that the defendant is dead, and who is his heir, executor, administrator, or representative, or where he may be served therewith.

In failure of appearance within six months after such service, decree absolute. (2)

19. If any person, so served with a copy of such decree, shall not, within six months after such service, appear and petition to have the cause reheard, such decree, so made as aforesaid, shall stand absolutely confirmed against the person so served with a copy thereof, his heirs, executors, administrators, and representatives, and all persons claiming, or to claim, by, from, or under him, or them, by virtue of any act done, or to be done, subsequent to the commencement of the suit.

Within what time and on what terms after service, or after decree andappearance, let in to defend. (3)

20. If any person, so served with a copy of such decree, shall, within *six months* after such service, or if any person, not being so served, shall, within *seven years* next after the making of such decree, appear in Court and petition to be heard with respect to the matter of such decree, and shall pay down, or give security for payment of such costs as the Court shall think reasonable in that behalf the person so petitioning, his heirs, executors, administrators, or representatives, or any person claiming under them

(1) New Rule, founded on 5. G. 2. c. 25.
(2) New Rule, founded on 5. G. 2. c. 25.
(3) New Rule, founded on 5. G. 2. c. 25.

by virtue of any act done before the commencement of the suit, may be admitted to answer the bill exhibited, and issue may be joined, and witnesses on both sides examined and such other proceedings, decree, and execution may be had thereon, as there might have been, in case the same party had originally appeared, and the proceedings had then been newly begun, or as if no former decree, or proceedings, had been in the same cause.

And proceedings thenceforth as if no former decree.

21. If any person against whom such decree shall be made, his heirs, executors, administrators, or representatives, shall not, within seven years next after the making of such decree, appear and petition to have the cause reheard, and pay down, or give security for payment of such costs, as the Court shall think reasonable in that behalf, such decree, made as aforesaid, shall stand absolutely confirmed against the person against whom such decree shall be made, his heirs, executors, administrators, and representatives, and against all persons claiming or to claim, by, from, or, under him, or them, by virtue of any act done, or to be done, subsequently to the commencement of the suit; and at the end of such seven years, the Court may make such further order, as shall be just and reasonable according to the circumstances of the case.

If no appearance and application for rehearing within *seven* years, decree absolute. ( )

And further order as just.

22. That if any defendant, subject to the jurisdiction, who has been duly served with a subpœna *ad respondendum*, do not enter his appearance in due time, then, upon affidavit of the due service of the subpœna, and a certificate that no appearance has been entered, an attachment shall issue, and on return of *non est inventus* to the same, and an affidavit to the satisfaction of the Court, that the defendant is a person who ought not to be taken on such attachment, according to the rules of this Court, the complainant may have an order, directing and appointing such defendant to appear at a certain day therein to be named, and a copy of such order, signed by the Equity Registrar of

How bill is to be taken *pro confesso* for want of appearance, where defendant has been served with subpœna, and failed to appear. (2)

Attachment,

Order for appearance.

(1) New Rule, founded on 5 G. 2, c. 25.

(2) See former Eq. R. 16, in part; and see 5, G. 2, c. 25.

this Court, shall within *fourteen* days of such order, be stuck up in the Court-house, and on the outside of the Court-house door, and be left at the said defendant's usual place of abode, and be inserted in one of the Calcutta newspapers, and the said defendant shall be three times publicly called and proclaimed in the said Court, (the Court sitting) on three successive Mondays, and in case such defendant shall not appear within the time limited by the said order, or within such further time as this Court shall think proper to grant, on proof made of such publication, and proclamations, as aforesaid, the complainant's bill shall, as against such defendant, be taken *pro confesso*, and the Court may make such decree thereupon, as shall be thought just, and may thereupon issue process to compel the performance of such decree either by an immediate sequestration of the real and personal estate and effects of the party, so absenting, (if any such can be found) or such part thereof as may be sufficient to satisfy the demands of the plaintiff, or by causing possession of the estate and effects, demanded by the bill, to be delivered to the plaintiff, or otherwise, as the nature of the case shall require, and the said Court may likewise order such plaintiff to be paid and satisfied his demands out of the estate and effects so sequestered, according to the true intent and meaning of such decree, such plaintiff first giving sufficient security in such sum as the Court think proper, to abide such order, touching the restitution of such estate or effects, as the Court shall think proper to make concerning the same, upon the defendant's appearance to defend such suit, and paying such costs to the plaintiff as the Court shall order; but in case such plaintiff shall refuse or neglect to give such security as aforesaid, then the said Court shall order the estate and effects so sequestered, or whereof possession shall be decreed to be delivered, to remain under the direction of the Court, either by appointing a receiver thereof, or otherwise, as to the Court shall seem meet, until the appearance of the defendant to defend such suit, and his paying such costs to the plaintiff as the Court shall think reasonable; or until such order shall be made therein, as the Court shall think just; Provided, if such defendant be resident in Great Britain or Ireland, that such suit against

Publication thereof.

Proclamation.

Decree *pro confesso*.

Sequestration

or Writ of possession.

Order for satisfaction, on security given by plaintiff to abide order on appearance.

If he refuse to give security, property to remain under direction of Court until appearance;

Proviso, if defendant resident in Great Britain.

such defendant so then resident in Great Britain or Ireland, shall have been commenced within two years after the cause of such suit arose, and that the sum to be recovered be not of greater value than 30,000 rupees.

that suit commenced within 2 years, and value not exceeding 30,000 rupees.

23. And when any defendant shall have appeared by attorney, and, not having put in his answer to the complainant's bill, shall stand committed to prison for such contempt, and shall be brought by *habeas corpus* three times into Court, and have the complainant's bill of complaint each time publicly read, and shall each time contumaciously refuse to answer the complainant's bill, the same shall, as against such defendant, be taken *pro confesso.*

Mode of taking bill *pro confesso* after appearance, against defendant in *custody* for *contempt*, for not putting in answer. (1)

24. That in case any defendant shall have appeared and after appearance, shall not put in a full answer to the complainant's bill, by the latest time which the Court shall think proper to grant, and the whole process of the Court has been awarded against him to the sequestration, the bill as against such defendant shall be taken *pro confesso.*

Mode of taking bill *pro confesso* after appearance, and process of *contempt* run through to *sequestration.*(2)

25. That if the answer of any defendant be determined insufficient, or exceptions thereto be submitted to, the complainant shall not be bound to serve him with any new subpœna, and if the answer is not filed within the time fixed, upon allowance of exceptions, process shall issue against such defendant, in the same manner as if he had put in no answer to the complainant's bill, and upon return of the sequestration, the complainant's whole bill of complaint shall be, as against such defendant, taken *pro confesso.*

Mode of taking bill *pro confesso* after insufficient answer, in case better answer be not put in.(3)

26. That after a contempt duly prosecuted to a commission of rebellion, and return thereof, no commission to take an answer shall be granted, nor any plea or demurrer be filed, but on motion and affidavit satisfactorily explaining the delay, and shewing that the costs of the contempt have been paid or duly tendered.

No plea or demurrer to be filed, or commission granted, after contempt to commission of rebellion and return, without leave and payment of costs. (4)

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(1) See former Eq. R. 16, in part.
(2) See former Eq. R. 17, amended.
(3) See former Eq. R 20, amended.
(4) See former Eq. R. 22.

All demurrers to be special, and notice given, and set down in 8 days;

or disallowed of course;

and process issued for better answer, and for costs of over-ruling.

And special order for re-argument.

Defendant also demurring *ore tenus*, to pay costs, although he succeed. (1)

27. That every demurrer do express the several causes of demurrer; and that the defendant do give notice to the complainant, or his attorney, on the day that he files his demurrer, of his having done so and enter the same with the Registrar, within eight days after the same has been filed, in order to be set down for argument, according to the course of the Court; and that in default of such entry being made within the time above directed, the demurrer shall be disallowed of course, as put in for delay; and that the complainant be at liberty to take out process, to compel the defendant to make a better answer, and also to pay him his taxed costs of over-ruling the demurrer; and that such demurrer shall not afterwards be set down, or debated, unless upon motion it be so ordered by the Court; And if any cause of demurrer do arise, and be insisted on at the argument, other than is particularly alleged, yet the defendant shall pay the taxed costs of over-ruling a demurrer, if the causes of demurrer so particularly alleged be disallowed, although the bill, in respect to that particular cause of demurrer, so newly alleged, shall be dismissed by the Court. (*a*)

Notice to be given of all special pleas,

to be determined by Court.

Eight days time to reply, or set down pleas for argument (2)

28. That upon filing all such pleas as are grounded upon the substance and body of the matter, or extend to the jurisdiction of the Court, the defendant shall give immediate notice thereof to the complainant, or his attorney; and that such pleas shall be determined in open Court, and the complainant shall, within eight days after having received notice of the filing of such plea, reply to the same, if he conceive the plea to be good, or shall enter the same with the Registrar for argument, if he conceive it to be otherwise, according to the course of the Court.

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(1) See former Eq. R. 24, and see Madras Eq. Rs. 14, 15, 16;—and see also Ld. Clar. ord. tit. *demurrer*. Bea. ord. Ch. 173, 174; and Ld. Lynd. ord. 31, 32;—and see note (*a*) *infra*.

(2) See former Eq. R. 24.

(*a*) When a defendant puts a demurrer on record, and also demurs *ore tenus*, if the demurrer on record is overruled, and the demurrer *ore tenus* is allowed, the defendant must pay the costs of the demurrer on record, unless the Court at the same time makes other order to the contrary, and *semble*, the Court will not be disposed to make such other order. See Mortimer *v.* Fraser, 2 M. & C. 173.

29. That no special replication be filed; and the complainant shall reply within two months from the filing of the answer, otherwise, on motion, a rule may be obtained to shew cause why the complainant's bill should not be dismissed for want of a replication, and unless good cause shall be shewn for such delay, the bill shall be dismissed accordingly; but in case there shall be several defendants, such order for dismission shall not be moved for, or obtained, till a full answer shall have come in from them all, unless proof shall be made, to the satisfaction of the Court, that the complainant hath not used due diligence to procure the same.

Special replications not allowed; Complainant to reply in *two months*, otherwise bill dismissed on motion, unless cause shewn. Where several defendants, no order until full answer from all, unless proof of due diligence not used. (1)

30. That after replication duly filed by the complainant, the defendant shall file his rejoinder in two days, without a subpœna to rejoin; and in case the defendant shall not rejoin within that time, the complainant may enter a rejoinder for him, and proceed to the examination of his witnesses.

Defendant to rejoin in 2 days without subpœna, or complainant may add rejoinder, and proceed to examine. (2)

SETTING DOWN AND HEARING CAUSES.

1. That when the depositions are copied and delivered out, and signed by the Sworn Clerk, the complainant be at liberty to set down his cause for hearing with the Registrar, and to take out from him a subpœna to hear judgment, returnable in four days; but that no subpœna to hear judgment be taken out, nor the cause set down for hearing until the expiration of fifteen days from the time publication has passed.

Cause may be set down for hearing in 15 days after publication (3)

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(1) See former Eq. R. 25;—and see Ld. Lynd. ord. 16, 17. Ld Brough. ord. 16, 17, of 1831, amending Ld. Lynd. ord.—also Ld. Brough. ord. 26, of 1833, and Props. 23, 24, 25, Chan. Com. Rep. and Mr. Beame's observations thereon.

(2) See former Eq. R. 26, now amended;—and see Ld. Lynd. ord. 20, and Prop. 26. Chan. Com. Rep.

(3) See former Eq. R. 50.

If complainant, within first term after publication, does not set down, defendant may do so, after first day of subsequent term. If complainant fail to appear, bill to be dismissed. (1)

2. That if the complainant shall not, in the first term after publication passes, set down his cause for hearing, the defendant shall be at liberty, at any time after the first day of the subsequent term, to set down and enter the cause, at his, the defendant's request; and if the complainant do not appear to hear judgment, affidavit being made of the due service of the subpœna to hear judgment, his bill shall stand absolutely dismissed.

Subpœna to hear judgment, when and how returnable and served. (2)

3. That four days' notice of hearing be given in all subpœnas to hear judgment, and that service on the party's attorney be deemed good service.

Rule for reading answers at hearings. (3)

4. That, where a plaintiff reads any part of the answer of the defendant as evidence, there the defendant shall be entitled to have also read as evidence, any other part of his answer which explains or qualifies the passage read by the plaintiff, although it be not grammatically connected as a member of the same sentence, but if such explanation or qualification, whether connected or not as a member of the same sentence, affirms a fact, the defendant shall not have the benefit of such fact, in evidence, without proving the same, unless it appear, upon the answer, that, under the circumstances, such fact is not capable of proof: it being understood that this rule does not prejudice the present right of the Court to refer to the whole answer, or the present right of the defendant, in certain proceedings, to have the whole answer read to the Court. (*a*)

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(1) See former Eq. R. 54.

(2) See former Eq. R. 52.

(3) New Rule. See Prop. 163, Chan. Com. Rep., from which this Rule is taken;—and see note (*a*) *infra*.

(*a*) "It has been in evidence before the Commissioners, that the rule which "enables a defendant to read any part of his answer, which either by the peculiar "frame of the passage read by the plaintiff, or by reference, can be substantiated "to be part of any passage read by the plaintiff conduces to the length, intricacy "of form, and consequent expense of the answer itself. The rule which makes "the defendant's power to read any passage, not previously read by the plaintiff, "to depend upon this passage being, or not being, either grammatically, or by refer-"ence, a part of or incorporated with a sentence previously read by the plaintiff, "seems difficult to reconcile with that simplicity of pleading so desirable to pre-"serve in Courts of Equity; and the rule itself must obviously in practice have "the effect of adding materially to the time consumed by the draftsmen, in

5. That on the day of hearing of each cause, if the defendant, having appeared and answered, do not appear to hear judgment, the answer of the defendant being read, and affidavit being made of the due service of the subpœna to hear judgment, the Court shall proceed to hear the cause *ex parte*, and to make a decree therein; but no such decree shall be considered as final, but shall be served upon the defendant, provided he can be found, and if he cannot be found, upon his attorney; together with a rule, to shew cause why such decree should not be made absolute; and if such defendant shall not appear, and shew good and sufficient cause, within fifteen days, against the said decree, such decree shall be made absolute, and the same shall be entered by the Registrar, without further order.

How decrees *nisi* are to be made and served, where defendant has answered, and does not appear.

Cause to be shewn against decree in 15 days, or entered by Registrar absolute without order. (1)

"framing the answer, to which it has a strong tendency to give a kind of scho-"lastic refinement.

"It seems to be far preferable, that where a plaintiff reads any part of the "answer as evidence, the defendant should be entitled to read any other part of "his answer, which explains or qualifies the passage read by the plaintiff, although "not grammatically or by reference connected as a member of the same sentence.

"When, however, a fact be affirmed in such explanation or qualification, the "defendant should not, in the absence of proof, have the benefit of such fact in "evidence, a rule observed in the civil law courts, unless it appear upon the "answer, that, under the circumstances, such fact is not capable of proof. Nor "should the rule prevent the Court from referring to the whole answer; "nor indeed the defendant himself, when by the rules of the Court he is entitled "to refer to it; as for example, when the cause is set down upon bill and answer, "when questions of costs are raised, &c. It has been pressed upon the commis-"sioners, that an entire alteration should be made in the existing rule; and that "by analogy to the rule prevailing at law, the defendant should be at liberty to "read the whole of his answer, if the plaintiff read any part of it. But the effect of "such a rule in equity would be to put the suitors in many cases, to an immense "additional expense. The plaintiff now only proves those facts essential to his "case, which the defendant does not admit by his answer, and the plaintiff "reads those facts from the answer which the defendant does admit. To pre-"vent the plaintiff reading out of the answer, those admissions of facts which "such answer contains, and that would be the effect in all those instances where "there was some one material fact which the defendant denied, or where there "were any facts constituting wholly or partially a defence, would be to put him "to the expense of proving that which his opponent, so far from controverting, "admits by his answer, and would (contravening the general maxim, that what "the litigating parties admitted on their pleadings, required no proof,) be often "in the result, and when he had to pay the costs, more injurious to the defendant "than to the plaintiff, and in that view, would enable a litigious plaintiff to har-"rass a defendant" Bea. obs. Prop. 163, Chan. Com. Rep.

(1) See former Eq. R 53, amended. N. B. This differs from the practice of the Court of Chancery, in which a decree *nisi* is only pronounced in cases

No cause to be shewn against a decree *nisi*, till costs of the day are paid to complainant. (1)

6. That no defendant be at liberty to shew cause against any decree *nisi*, till such time as he has paid to the complainant the taxed costs of the day, and upon such costs being paid, and a receipt for them produced, such defendant shall be at liberty to move on petition, that such cause shall stand restored again to the paper.

REHEARING.

Petition for rehearing within what time and how to be presented, and proceedings thereon.

1. That when any party shall be dissatisfied with the judgment of the Court, given upon the hearing of any cause, plea, demurrer, or exception to the Master's report, he may, if so advised, petition for a rehearing within fourteen days after the delivery of the minutes to the party, and provided that within six days, after such delivery, he do enter a caveat with the Registrar against the same; and that every such petition shall have thereunto annexed a certificate, under the hand of one of the advocates of this Court, testifying, that in his opinion, such cause is proper to be reheard, and after a caveat so entered, if either party shall apply to the Registrar for the decree, the Registrar shall immediately give notice to the attorney, of the party on whose behalf such caveat has been entered, in order that he may apply for such rehearing within the time before limited, if he shall be so advised; but if no such caveat shall be entered, and no such petition of rehearing shall be presented to the Court within the time aforesaid, the Registrar shall proceed to enrol the decree, and shall issue process of subpœna for carrying the same into execution.

If no caveat, petition or decree to be enrolled, &c. (2)

Deposit to be made on filing

2. That the party dissatisfied with the judgment of the Court, shall, on the filing of any petition of rehearing,

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where the defendant having answered, and being served with a subpœna does not appear at the hearing.

(1) See former Eq. R 55.

(2) See former Eq. R. 59.

deposit with the Registrar four hundred rupees to be paid to the adverse party, when the decree or order reheard is not altered in any material part, together with the further taxed costs occasioned by the rehearing, unless the Court shall otherwise order.

petition for rehearing. (1)

EXAMINATION OF WITNESSES.

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1. That the complainant in every cause be at liberty, at any time after issue has been joined, to serve a rule on the defendant to file his interrogatories, within three weeks from the service of such rule; and should the defendant not file his interrogatories within the time above specified, or having done so, not proceed to examine his witnesses (or to take out his commission where a commission may be necessary) on or before the last of eight days, the first to be computed from the end of three weeks allowed him for filing his interrogatories, the complainant may be at liberty to enter with the Registrar, a rule for publication, to pass in four days; and the said rule shall be made absolute at the expiration of the same, unless the defendant comes in, and pays the costs of such rule and undertakes to file his interrogatories, and commence the examination of his witnesses, or take out his commission (as the case may be), and proceed in the same, on or before the day on which the complainant would have been entitled to obtain a rule absolute for publication to pass, unless further time shall have been granted by the Court or a Judge thereof.

After issue joined, complainant may rule defendant to file interrogatories in three weeks.

If defendant fails to do so, or examine witnesses, or sue out commission in 8 days, complainant may enter with Registrar rule for publication in four days.

And publication to pass, unless defendant comes in and pays costs and obtains further time, on undertaking to speed the cause. (2)

2. That the complainant, where he intends to examine witnesses, do file his interrogatories in three weeks after replication, and that if the complainant do not set down the cause for hearing, or file his interrogatories within the

Complainant to file interrogatories in 3 weeks afterreplication, if not, or does not set down

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(1) New Rule.

(2) See former Eq. R. 27; and see Ld. Lynd. ord. 18, and Ld. Brough. ord. 18, amending Ld. Lynd. ord.

As to rules for Examiner's office see Ld. Bac. ord. Bea. ord. Ch. 32, Ld Keep. Cov. ord. Ibid 71, Ld. Clar. ord. Ibid 18, 4 Ld. Chan. Jeff. ord. Ibid 272, and ord. Lrds. Comrs. 1649, App. Bea. ord. Ch. 492.

cause, bill dismissed with costs, unless he come in, on service of rule and pay costs, and undertake to file interrogatories, or set cause down, in *one week*, unless time granted.

If complainant make default, bill dismissed *ipso facto*. (1)

time above specified, the defendant may dismiss the bill, with costs, for want of prosecution, unless the complainant on being served with the rule *nisi* for so dismissing his bill, comes in, and pays the costs of the said rule, and undertakes to set down his cause, or file interrogatories, within one week from the day upon which the defendant was entitled to make his rule for dismissing the bill absolute, unless the Court or a Judge thereof in vacation, shall see sufficient reason to allow further time; and unless the cause be so set down, or the interrogatories filed, within the time so granted, the bill shall stand absolutely dismissed without further order.

Persons of integrity to be employed in the Examiner's office, and sworn to secrecy till publication.

Penalty for infringement of rule by clerk, examiner, or attorney. (2)

3. That the Examiner do take care to employ under him, in his office, none but persons of known integrity and ability, who shall take an oath not to deliver, or make known, directly or indirectly, to the adverse party or any other, (save the deponent who comes to be examined on any of the interrogatories delivered to be examined upon), any examination by him taken, or remaining in the Examiner's office an extract copy, or breviate thereof, before publication thereof be passed, and the copies thereof taken; and if any such deputy clerk, or person so employed, shall be found guilty in the premises, he shall be expelled the office, and the Examiner, who so employed him, shall be also answerable to the Court for such misdemeanor, and to the party grieved, for his costs and damages sustained thereby; and such attorney or other person, who shall be discovered to have a hand therein, shall be liable to such censure for the offence as the Court shall find just to inflict upon him.

Complainant to proceed to examine in 12 days after filing interrogatories,

4. That if the complainant, after filing his interrogatories, do not proceed to examine witnesses within twelve days, if they reside in Calcutta, or within ten miles thereof, or should they reside at greater distance, take out a commission

(1) See former Eq. R. 28, and see references in note (2) *ante* 151, as to rules for Examiner's Office.

(2) See former Eq. R. 31, and see references in note (2) *ante* 151, as to rules for Examiner's office.

to examine them within the time above specified, (unless leave of the Court or of a Judge thereof, granting further time, has been obtained) the defendant shall be at liberty to move to dismiss the bill with costs, for want of prosecution, and the same shall be absolutely dismissed, unless good cause be shewn to the contrary.

or take out a commission, or defendants may move to dismiss bill. (1)

5. That no witness be examined in Court by the Examiner, without the privity of the adverse party, or of the attorney who acts for the adverse party, to whom the person to be examined shall be shewn, and a note of his name, and place of dwelling, delivered in writing, by such as shall produce him; and that the Examiner do take care, and be well satisfied, that such notice be given, and then shall add to the title of the witnesses examination, the time of such notice given, and the name of that person to whom it is given, and by whom.

No examination without notice to adverse party, and description of witness.

Examiner's duty thereon. (2)

6. That after interrogatories shall have been filed, and the examination of witnesses on those interrogatories shall have been begun, there be no new or additional interrogatories put in, by the same party, to examine witnesses in the same cause, without the leave of the Court, or (if in vacation) of a Judge thereof, being first had and obtained; such motion, or application to a Judge, not to be made without notice to the opposite party.

After examination begun, no additional interrogatories without leave, on notice of application. (3)

7. That no witness be re-examined to the same facts which he had before been interrogated upon, nor shall any witnesses be examined after the day of publication, though they were sworn before; and a copy of the rule or order whereby publication passed, shall be delivered to the Examiner, that he may have due notice thereof; And that the Examiner do examine each deponent to the interrogatories directed, *separatim*, and not permit him to read over, or hear read any other interrogatories, until that

Witness not to be re-examined to same facts, nor after publication, of which notice to be given to Examiner.

Mode prescribed for the

(1) See former Eq. R. 33;—and see references in note (2) *ante* 151, as to rules for Examiner's office.

(2) See former Eq. R. 34, amended;—and see same references.

(3) See former Eq. R. 35;—and see same references.

Examination of witnesses by the Examiner. (1)

in hand be fully finished, and shall not suffer any deponent to have the interrogatory to pen his own deposition, or depart, or to have any consultation or communication with any other person, after he hath heard an interrogatory read over, until he hath perfected his examination thereunto; and that when the Examiner shall have begun the examination of a witness, he shall, if possible, finish the whole of his deposition before he permits him to depart; and after the examination of witnesses has begun in any cause, the Examiner shall, if possible, proceed *de die* in *diem* to examine all the witnesses in a cause, (unless an order of Court or of a Judge, to the contrary, be obtained,) beginning with the complainant's witness.

Cross interrogatories to be filed before examination in chief, of which, for that reason, six days notice to be given. Not to be filed afterwards without order. (2)

8. That all cross interrogatories be filed before the party, to whom such cross interrogatories are to be exhibited, has been examined in chief; and, to enable the party filing cross interrogatories to prepare the same, it is ordered, that six days' notice of intended examination of a party in chief, shall be served on the opposite attorney; no cross interrogatories to be filed after that without an order of Court, or of a Judge thereof, and the Examiner is to proceed in the examination in chief without further delay.

Mode of compelling witnesses subpœnaed to attend and be examined and conform to Rule 7. (3)

9. That if any witness, in any cause depending in the equity side of the Court, being served with a subpœna *ad testificandum*, refuse to come to be sworn, or, being sworn, refuse to be examined, or, appearing to be examined, refuse to conform to the mode of examination laid down in the seventh rule, the party shall be at liberty to apply to the Court if sitting, or to a Judge thereof in vacation, (upon a certificate of the facts from the Examiner, and an affidavit of the service of the subpœna,) for an order, that the witness do attend in three days, to be examined, or in default thereof that he be committed; and it is further ordered, that if the witness, upon being duly served with the said order, do not pay due obedience to the same, he shall be

(1) See former Eq. R. 36;—and see references in note (2) *ante* 151, as to rules for Examiner's office.

(2) See former Eq. R. 38;—and see same references.

(3) See former Eq. R. 39, amended;—and see same references.

committed forthwith; and it is further ordered that copies of this rule, in the native languages, be affixed at the Examiner's office, and at the usual places, where notices are affixed.

Rule to be affixed in office, &c.

10. That the Examiner do not examine any witness to invalidate the credit of any other witness, but by special order of the Court, or one of the Justices thereof, which is sparingly to be granted, and upon objections filed with the Examiner, and notice thereof given to the adverse party, or his attorney, together with a true copy of the said objections, at the charge of the party examining.

Witness not to be examined to invalidate credit of another, but on objections filed, and order of Court or Judge. (1)

11. That no interrogatories be exhibited, for the examination of witnesses in any cause depending on the equity side of this Court, whether in Court, in the Examiner's office, or by commission up-the-country, before such interrogatories shall be either drawn, or perused by an advocate, and signed by him, and that all depositions taken contrary hereto shall stand suppressed.

All interrogatories to be signed by an advocate. (2)

12. That the depositions of every witness examined, either before the Examiner, or before Commissioners in the country, be taken down in the first person, instead of the third, the pronoun "I" being substituted in all cases for the words "this deponent," and that the other words of every deposition be also varied, whenever necessary, so as to correspond with this alteration. (*a*)

Depositions to be taken in the first person. (3)

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(1) See former Eq. R. 40;—and see references in note (2) *ante* 151, as to rules for Examiner's office,

(2) See former Eq. R. 41, amended;—and see same references.

(3) New Rule. See Rep. Chan. Com. Prop. 44, from which this rule is taken;—and see note (*a*) *infra*.

(*a*) "At present the depositions of witnesses are taken in the third person, "but that it would be beneficial that such depositions should be taken down in "the first person, instead of the third, appears from the reasons stated by one "of the Examiners. By the change of person (he observes) the length, and "consequently the expense of the deposition would be materially diminished. "Instead of the words, "*and this deponent further saith, that he,*" which "begin nearly every sentence in a deposition, would be substituted the simple "pronoun "I," and the Commissioners will recollect that parties pay for every "word (that is for every folio containing a set number of words). But besides "this saving, the Examiner would be materially facilitated in taking the depo-"sition by the use of the first person, and would be able to follow much nearer "than he can at present, the witnesses own language. The deposition too,

Last interrogatory altered, and future form. (1)

13. That the last interrogatory now commonly in use be in future altered, and shall stand, and be, in the words, or to the effect following:—" do you know, or can you set forth, " any other matter, or thing, which may be of benefit or " advantage to the parties at issue in this cause, or either of " them, or that may be material to the subject of this your " examination, or to the matters in question in this cause, if " yea, set forth the same, &c." (a)

" would carry much more the life and spirit of a *vivâ voce* examination, and " be relieved in a great measure from the stiffness and artificial appearance " with which the third person invests it. It would also, I am persuaded, be " more intelligible to a great number of the witnesses, who are apt to confound " the distinction of persons, when speaking of "*him the said defendant*," "*him* " *this deponent*," *&c.* and indeed with some of the subjects, who appear before " him, the Examiner is obliged to commence by explaining to the witness, and " desiring him to carry in his recollection, that *he* is the deponent." Independently of these reasons, which are conclusive in support of the proposed alteration, it appears, that the diminution which will thereby be effected in the length of depositions, will be about one-sixth. Bea. obs. Prop. 44. Chan. Com. Rep.

(1) New Rule. See Rep. Chan. Com. Prop. 45, from which this rule is taken. Ld. Brough. ord. 32, of 1833;—and see note (a) *infra*.

(a) " Amongst the objections which have been made to the form of the " interrogatories exhibited for the examination of witnesses, not the least pro- " minent, is that which applies to the last interrogatory, requiring the witness " to state any thing, *which may be of benefit, or advantage to the party, on* " *whose behalf he is examined;* and the two Examiners concur in representing, " that, conceiving those words most emphatical, they would not suffer a witness " to state in his answer, any thing, however material to the matter in issue, " unless the witness represented, in the exercise of his own discretion, that he " considered it beneficial to the party for whom he was called to give evidence. " In this view of the matter, the result might be most incompatible with the " purposes of justice, if this were the only interrogatory on which the witness " were examined; as he might know that which would be totally destructive of " the whole case of the party who called him, but which would not come out " upon this interrogatory. But although it be perfectly true, that this particular " mischief would in many instances be corrected by the previous examination; " the witness had gone through on the other interrogatories, in answering " which he ought to, and probably would state all he knew on each particular " point, without regarding whether it was beneficial, or prejudicial to the party " who called him; and although it may be questioned, whether the Examiners " have not put rather too narrow a construction on the language of the last " interrogatory, taken in connection with their duty in acting upon it, it cannot " be denied, that it is highly expedient to remove the imputation of partiality, " and the possible result of it in particular instances, by giving the last interro- " gatory a more general form, and inserting, instead of the more objectionable " passage the words, "*material to the subject of this examination*," which " will, unquestionably, let in evidence, that is material to the matter in issue, " whether beneficial, or not, to the party examining; in other words, will let in " the whole, and not merely a part of the truth." Bea. obs. Prop. 45. Chan. Com. Rep.

14. That where any person, complainant or defendant, shall ground any motion, or petition, on an affidavit of having material witnesses to examine, whereby to gain longer time to examine, such affidavit shall not only contain the names of such witnesses, but the points on which they are designed to be examined unto, to the end that the Court may see whether such points be material, whether before, or after hearing, that all delays occasioned by unnecessary examination may be avoided.

Motion for time to examine, to be made on affidavit, giving names of witnesses, and shewing how points material, on which it is proposed to examine. (1)

15. That where either party, the complainant or defendant, obtaineth an order to use depositions of witnesses taken in another cause, the adverse party may likewise use the same, without motion, unless he be (upon special reason showed to the Court by that party first desiring the same) inhibited by the same order, so to do.

When leave obtained to use depositions taken in another cause, adverse party may use them without order, unless restrained. (2)

16. That no copies of interrogatories, or of cross interrogatories, be granted, either by the Registrar or the Examiner, before publication passed; and that the interrogatories of each party be kept secret from the other, until publication hath passed.

No copies of any interrogatories to be given before publication, same to be kept secret. (3)

17. That if the complainant in any cause, shall proceed to examine witnesses, and shall on such examination prove no more than what had previously been admitted by the answer, he shall pay to the defendant all costs incurred after answer, up to the time of obtaining the decree; although such decree should be in his favour; unless it appears by the answer, that the defendant has insisted upon matters in avoidance of such admission, or admissions, as he may have made in his said answer.

Where complainant proves no more than the answer admitted, he shall pay costs after answer, though he obtains decree, unless matters in avoidance insisted on. (4)

18. That where a bill prays for an account, no more witnesses be examined than are strictly necessary to entitle the party to an interlocutary decree to account; and

Bill praying account, no witnesses to be examined

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(1) See former Eq. R. 42;—and see references in note (2) *ante* 151, as to rules for Examiner's office.

(2) See former Eq. R. 43;—and see same references.

(3) See former Eq. R. 44.

(4) See former Eq. R. 46;—and see Rules 3 and 4, *tit* "Decreetal Order" and "Decree" *post*, 159, and see note (*a*) *infra*.

than necessary to entitle party to decree, if more, attorney to pay costs. (1)

if it appear to the Court, that more witnesses are examined than are necessary, the attorney producing them shall pay all the costs incurred thereby.

If examination to competency after publication, objections to be filed,

19. That after publication passed and depositions copied and delivered out, any party, desirous to examine touching the competency or credibility of any of the witnesses, do file objections in the Examiner's office, containing the substance of the objection made to the testimony of such witnesses; and such objections being filed, and a certificate of the Examiner that they are so, the party so objecting may, by motion in open Court, or by petition to any justice thereof, obtain an order for that purpose.

and leave obtained. (2)

Copies of exhibits not to be delivered out, except at request of party or attorney exhibiting.

20. That no copy of any exhibit be issued to any person whatsoever, except at the request of the party in the cause on whose behalf the same was exhibited, or his or her attorney in the cause. And that no exhibits produced on the examination of witnesses in this Court, either in the Examiner's office, or returned with any commission for the Examination of witnesses, to this Court, shall be shewn to, or in any way inspected, or made public to the opposite party or parties in the said cause, or to any other person or persons whatsoever, except as aforesaid, without the special order of this Court for that purpose, first had and obtained, but shall be carefully retained secret, until such time as the same shall be read, or tendered, in open Court, as evidence in the cause in which they were exhibited, in the same manner as if publication had not passed.

Nor any shewn to opposite party, or, made public, without special order, until hearing(.3)

DECRETAL ORDER AND DECREES.

Registrar to take down minutes, and decree to be conformable.

1. That the Registrar do carefully and exactly take minutes of the opinion of the Court, and draw up the decree exactly conformable thereto; but if it should so

(1) See former Eq. R. 47;—and see references in note (2) *ante* 151, as to rules for Examiner's office.

(2) See former Eq. R. 49;—and see B. Eq. R. 7, for Examiner's office.

(3) See former Eq. R. 76.

happen, that the minutes taken at the hearing are doubtful, or that either party thinks himself aggrieved by the decree, conceiving the minutes wrong taken, or contrary to the plain sense and meaning of the Court, when the decree was pronounced, the party so objecting to the minutes, upon undertaking to answer costs to the other party, may apply by motion or petition to the Court, that the Registrar may attend with his minute book, in order that the Court may alter or vary the decree so drawn up, in such manner as shall be thought right; provided always, that such application be made to the Court within one week after the delivery of such minutes to the party.

Motion to rectify minutes to be made in one week. (1)

2. That when the decree is passed by the Registrar, the same shall be entered in a book, to be kept for that purpose, before the first day of the term subsequent to such decree pronounced.

Decree when to be entered (2)

3. That where a bill is filed for an account, and the defendant has put in his answer, submitting to account, there, if the plaintiff afterwards desert his suit, so as to entitle the defendant to dismiss the bill for want of prosecution, the defendant, if he thinks fit, instead of dismissing the bill, may apply to the Court upon motion or petition, for a decretal order for the account; and the defendant shall in all respects proceed upon such decretal order, if the Court thinks fit to make it, as if his proceeding were under a decree at the hearing. (*a*)

After answer submitting to account, defendant, in lieu of dismissing bill for want of prosecution, may apply, on motion or petition, for decretal order to account. (3)

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(1) See former Eq. R. 56.

(2) See former Eq R. 57.

(3) New Rule. See Rep. Chan. Com. Props. 135, 136, upon which this rule is framed;—and see note (*a*) *infra*.

(*a*) " A bill for an account usually, if not invariably, contains a submission " on the part of the plaintiff to pay the amount, if any, which may be found " due from him to the defendant on the taking of the account; but although to " such a bill the defendant should put in an answer, submitting to have that " very account taken which the plaintiff has prayed, and thus submitted to be " bound by the result of, yet if the plaintiff should not choose to prosecute his " suit, the defendant has no alternative conceded him by the existing practice; " he can merely dismiss the bill for want of prosecution with costs, and must " have recourse to another suit, in which he changes sides, and in his turn " becomes the plaintiff. Some of the most experienced and intelligent of the " persons examined concur in opinion, that this part of the practice strongly " calls for alteration, and it is obviously beneath the dignity of a Court of " Justice to allow its forms to be thus trifled with; to allow a suitor to come

Where cause set down for hearing and plaintiff makes default, defendant may apply for decree to account. (1)

4. That where, upon a bill filed for an account, the cause is set down for hearing, there, if the plaintiff do not appear at the hearing, the defendant, instead of dismissing the bill, may apply to the Court for a decree for an account, and, if the Court shall think fit to make such decree, the defendant shall proceed under the same, in all respects as if the decree had been obtained by the plaintiff.

No decree or order, except in special injunctions, to contain recital of bill, answer, or Master's report, except finding or opinion.

5. For the purpose of avoiding, as much as may be, expence and delay in the drawing of the decrees and orders of this Court, It is hereby directed, that, except in orders for special injunctions, in which the usual recitals shall be inserted as heretofore, neither the bill nor anwers nor any part thereof, be stated or recited in the original decree or order; and that no part of the Master's report be stated in any decree, upon further directions, except the Master's finding, or opinion upon the subject referred

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"into Court and tender terms as those by which he would abide, and then at "his pleasure to withdraw himself, after he had extorted, on the faith of those "terms, a full discovery from the defendant. The evil should be corrected in "the particular case put, by allowing the defendant an option, should the plain-"tiff desert his suit, of dismissing it for want of prosecution, or of applying "upon motion or petition for a decretal order for the account; and which "order, if pronounced, should in all respects be equivalent to a decree at the "hearing. But as it is obvious, if the rule were to stop here, an artful plaintiff, "in order to avoid the effect of it would, in the particular case, set down his "cause, and then abandon it at the hearing, for the purpose of having it dis-"missed with costs merely; this leads at once to the consideration of another "of the existing rules, namely, that if a plaintiff make default at the hearing, "the only decree which the Court can make is a decree of dismission with "costs. Whatever argument may be adduced in support of this, as a general "rule, it is productive of the grossest injustice, when the bill seeks an account, "and is founded on the express, or tacit submission on the part of the plaintiff, "to abide by the result of it. If the plaintiff obviously ought not in an earlier "stage of the cause to be allowed to withdraw from that pledge he had ten-"dered to the Court and to his opponent, it follows, he ought not to be permit-"ted to do it at this late stage of the cause, when so much additional delay and "expense have been incurred; but the defendant ought, on the contrary, to be "at liberty to apply for a decree for an account, instead of dismissing the bill, "and such decree, if pronounced, should in all respects be as effectual as if it "had been obtained by the plaintiff."

(1) New Rule. See Rep. Chan. Com. Props. 135, 136, upon which this rule is framed;—and see note (*a*) *ante* 159.

to him; And that in orders made upon petitions no part of the petition be stated or recited except the prayer, and that the same principle of brevity be observed in all the orders of this Court made upon motion, so far as may be consistent with a statement explaining the grounds upon which the order is made. And for the better understanding of this order, certain forms of decrees and orders drawn pursuant hereto are subjoined; And it is hereby directed, that such forms shall be observed in all cases, as nearly as may be, and that before any order made on a petition be passed the original petition be filed with the Registrar.

In order on petition, only prayer to be inserted,

and like brevity in all orders.

Forms given to be observed,

original petition to be filed with the Registrar. (1)

THE FORM OF AN ORIGINAL DECREE.

Date and Title.

This cause coming on this present day to be heard and debated before, &c. in the presence of Counsel learned on both sides, and the pleadings in this cause being opened, upon debate of the matter and hearing [*here state, in the usual form, a description of the evidence which was read,*] and what was alleged by the Counsel on both sides, the Court doth order and decree, [*or* "doth declare,"] &c.

Forms of decrees.

THE FORM OF A DECREE UPON FURTHER DIRECTIONS AFTER A MASTER'S REPORT.

Date and Title.

This cause coming on the ——— day of ——— to be heard and debated before, &c. the Court did order and decree or declare [*here state the decretal part, except the words of course*] that in pursuance of the said decree, the said Master made his report, bearing date the ——— day of ——— which stands absolutely confirmed by an order dated the ——— day of ——— and thereby found (*here state the Master's finding or opinion only.*) And this cause coming on this present

(1) New Rule. See Ld. Brough. ord. 27, of 1833.

day to be heard before, &c. for further directions, and, as to the matter of costs reserved in the said decree (*if costs be reserved*) in the presence of Counsel learned on both sides, upon opening and debate of the matter and hearing the said decree, &c. read, and what was alleged by Counsel on both sides, the Court doth order, &c.

The like form in other cases.

The same form to be observed upon the decree for further directions, *mutatis mutandis*, where, upon the original hearing, an issue or a case for the opinion of a Court of law is directed, or the bill is retained for twelve months, with liberty, to bring an action. The issue, and verdict of the Court to be stated at length, but the Judge's certificate upon the case only, and not the case itself.

THE FORM OF AN ORDER UPON PETITION.

Date and Title.

Form of order on petition,

Whereas A. B. did on the ——— day of ———, prefer his petition unto, &c. setting forth as therein set forth, and praying (*here state the prayer*) whereupon, all parties concerned were ordered to attend the Court on the matter of the said petition, and Counsel for the petitioner and for ——— this day attending accordingly, upon hearing the said petition, &c, read, and what was alleged by the Counsel for the petition and the Counsel for ——— the Court doth order, &c.

MISCELLANEOUS.

Four days' notice of special motions and petitions. (1)

1. That four days' notice be given to the opposite party of all special motions to be made in Court, and of all petitions, notice of which is necessary.

When a party does not move according to notice, he shall pay 40 rs. costs,

2. That if a party gives notice of motion, and does not move accordingly, he shall, where no affidavit is filed, pay to the other side 40 rupees costs, upon production to the

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(1) See former Eq. R. 15, altered;—and see Ld. Lynd. ord. 22, of 1828.

taxing officer, of the notice of motion; but, when grounds are filed by either party, the party giving such notice of motion, and not moving, shall pay to the other side costs, to be taxed by the taxing officer, unless the Court shall otherwise direct.

if no affidavit filed; when grounds filed by either side, he shall pay taxed costs, unless otherwise ordered. (1)

3. All injunctions must be moved for on notice, exc ept in cases of irreparable injury or waste, where rules *nisi* may be applied for.

Injunctions to be moved on notice, except waste, &c. (2)

4. That no person in contempt shall ever be heard by motion or otherwise, unless called upon to shew cause, or by special leave of the Court, till such time as he has cleared his contempt, and paid the costs which the taxing officer shall award upon such contempt.

No party in contempt to be heard on his own motion, except by special leave. (3)

5. Upon shewing cause on a rule *nisi*, on the equity side, the practice to be that the party to shew cause, shall do it at the sitting of Court, on the day in which the rule expires; should cause not be shewn, the party in whose favor the rule is, may move to make it absolute, as soon as the whole of the motions of that day, as well on the plea side, as on the equity side of the Court, are gone through, and before any cause be called on.

Mode of shewing cause and making rules *nisi* absolute. (4)

6. In motions on notice the affidavits and grounds of the party moving must be filed at least four days before the day for which notice of motion is given; and in cases of long grounds in time enough to take office copies and prepare grounds to oppose; and all affidavits and grounds on which the motion is to be opposed, or cause to be shewn must be filed on or before the sitting of the Court on the day of shewing cause.

When affidavits and grounds of motion are to be filed. (5)

7. That the Registrar and Sworn Clerk do deliver over to the keeper of the records and muniments, all bills which

How and when the Equity

(1) New Rule. See Chan. Rep. of 1818, 1 Swann. 128. Eq. R. 2.
(2) New Rule.
(3) See former Eq. R. 23, Ld. Bac. ord. Bea. ord. Ch. 35, Ibid 124, note.
(4) See former Eq. R. 60.
(5) See former Eq. R. 61.

Registrar is to deliver over papers to the Keeper of Records. (1)

have been dismissed, and all other proceedings in causes in equity, at the end of one year from the term in which such bill has been dismissed; and that the Registrar do deliver over to the keeper of the records and muniments, all the proceedings in causes on the equity side of this Court, wherein decrees have been made, and wherein no appeals have been entered in one year subsequent to the time of passing such decree, and that where appeals have been entered, the decrees in such causes be delivered over in six months, subsequent to the time of filing in this Court, the final order of the King in Council, or other, the final determination of such appeal.

Equity Registrar to report, each term, decrees pronounced and bills dismissed in preceding.

to be delivered to record keeper,

who is to report whether delivered. (2)

8. That the Registrar, on the first day of every term, do give in a report in writing to the Court, of all the decrees pronounced, and bills dismissed, in the preceding term, and that the said report be read in Court, and marked, and afterwards be delivered to the keeper of the records and muniments; and at the periods when the records, &c. of any term ought to be delivered to the keeper of the records and muniments, according to the preceding seventh rule, that the keeper of the records and muniments do report in writing to the Court, whether the same be duly delivered by the Registrar, according to his report, as aforementioned, for the term, and specify any difference, or variance, if there should be any.

Sworn Clerk to prepare office copy bill, on appearance, unless defendant gives notice he does not require one. (3)

9. That when an appearance is entered with the Registrar, any defendant may give notice that he does not require an office copy of the bill; but if he does not give such notice, the Registrar is required to inform the Sworn Clerk of the appearance having been entered, and the Sworn Clerk is forthwith to prepare an office copy of the bill.

Sworn Clerk to furnish to any one applying

10. For the purpose of enabling all persons to obtain precise information, as to the state of any suit or proceeding in equity, and to take the means of preventing improper

(1) See former Eq. R. 62.

(2) See former Eq. R. 64, altered.

(3) See former Eq. R. 78.

delay in the progress thereof, the Sworn Clerk shall, at the request of any person, whether a party or not in the suit, or matter required after, furnish a certificate of the state of the cause, specifying therein, the dates and general description of the several proceedings which have been taken.

certificate of state of suit and proceedings. (1)

11. The following papers and no others shall be delivered to each of the Judges of the Court two clear days previous to the day on which the matter is to be heard; that is to say,

What papers delivered to Judges on hearings, and by whom, and when (2)

1st. At the hearing of any cause, one copy of the prayer of the bill, by Solicitor setting down the cause.

Cause.

2d. At the hearing of any plea or demurrer, one copy of the pleadings by the Solicitor setting down the plea or demurrer.

Plea, or demurrer.

3d. At the hearing of exceptions to the Master's report upon references for scandal, or impertinence, or for the insufficiency of answers, or examinations, one copy of the exceptions, and of the parts of the pleadings mentioned in the Master's certificate, and of such parts only of the report the exceptions may refer to, by the Solicitor for the party excepting.

Exceptions to Master's report on references for scandal, or for insufficiency of answers, or examinations.

4th. At the hearing of any exception to the Master's report, upon matters referred to him by any decree or decretal order, one copy of such decree or decretal order, and of the report and exceptions, by the excepting Solicitor.

Exception to report on references by decree, or decretal order.

5th. On further directions one copy of the decree, and Master's report, by the Solicitor of the party setting down the cause.

Further directions.

6th. On rehearing, one copy of the decree or order complained of, and of the petition of rehearing, by the Solicitor of the party petitioning for rehearing.

Rehearing.

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(1) See former Eq. R. 99, of 1829.

(2) New Rule. See Mad. Eq R. 55.

On hearing exceptions to report for scandal, or insufficiency, argument to be confined to matter in paper books. (1)

12. That at the hearing of exceptions to the Master's report upon references for scandal, or impertinence, or for the insufficiency of answers, or examinations, the parties shall not be allowed to refer in argument before the Court to any other matter than is contained in the paper books delivered to the Judges.

PROCESS.

Writs and process to issue from and be returned to Eq. Reg. office. (2)

1. That all writs, orders, and other mandatory process, do issue from, and be returned to, the Equity Registrar's office.

No process till bill filed, and order of Court or Judge. (3)

2. No process shall issue until a bill be filed, nor shall any process issue without the leave of the Court or a Judge.

Process to compel appearance.

Subpœna,

capias of contempt,

Writ of proclamation,

Commission of rebellion,

Sequestration. (4)

3. That the first process to compel an appearance, be the subpœna, and if the defendant does not put in an appearance, by the time allowed by the rules of this Court, that a capias, in the nature of an attachment, do issue; and if a return of *non est inventus* be made to such capias, that a writ do issue, directed to the Sheriff, to cause the defendant to be publicly proclaimed; and if the writ of proclamation be returned executed, and the party doth not in consequence thereof appear, that a writ in the nature of a commission of rebellion do issue; and if *non est inventus* be returned to such last mentioned writ, that a writ of sequestration do issue against the defendant's effects.

All defendants to be in one subpœna,

4. That the names of all defendants may be inserted in one subpœna *ad respondendum*, and that where more

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(1) New Rule.

(2) See former Eq. R. 1;—and see Gen. R. 20, *ante* 6;—and see Ld. Bac. ord. 85 to 89, Bea. ord. Ch. 37 to 40.

(3) See Ld. Bac. ord. 85, Bea. ord. Ch. 37.

(4) See former Eq. R. 2;—and see Props. 6, 8, Chan. Com. Rep.

than one subpœna is taken out, the attorney must satisfy the taxing officer of the necessity for taking out more than one: and such writ shall be in the form mentioned in the schedule at the end of these rules, or as near as may be, with such alterations, and variations, as circumstances may require.

In case of more, attorney to shew necessity on taxation.

Form thereof. (1)

5. That every subpœna *ad respondendum*, be served personally upon the party or parties to whom it is directed, or left at his or their dwelling house, with one of the family, or at his, or their last usual residence; and if there be more than one defendant in the subpœna and the service cannot be effected as abovementioned, then that a copy be delivered to the first defendant named in the said writ, the body thereof under the seal of the Court, having been first shewn to him. And so to all the others, as the case may be. And where a subpœna or other process shall be issued against a native, there shall be an indorsement, in the native language and character, on the original or copy served, concisely stating the nature of the act to be done, and at whose suit such process issued.

Subpœna how to be served.

On subpœnas and other process to natives, substance in native language to be indorsed. (2)

6. That in case the defendant live within the town of Calcutta or ten miles thereof, the process be returnable immediately, and that every such defendant do appear within four days, exclusive of the day of service thereof; and that in case the defendant live above ten miles from Calcutta, the process be made returnable on such day certain, as the Court or one of the Judges thereof shall direct; And the Equity Registrar shall not issue any writ in the nature of an attachment, for a contempt, for non appearance to a subpœna returnable immediately at the expiration of four days, unless upon an affidavit filed in his office, expressly averring, that the usual place of residence of the defendant, against whom such writ in the nature of an attachment is required, is at Calcutta, or within ten miles thereof.

Defendant in Calcutta, or within 10 miles, process returnable immediately.

And defendant to appear in 4 days.

If above 10 miles, as ordered.

Process of contempt not to issue on subpœna returnable immediately, except on affidavit of residence being in Calcutta, or within 10 miles. (3)

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(1) See former Eq. R. 5.

(2) See former Eq. R. 6, now amended and altered;—and see Ld. Clar. ord. Bea. ord. Ch. 169.

(3) See former Eq R. 8.

Where possession retained, after writ of execution and demand, and affidavit made, Attachment and writ of assistance to issue at same time, Writ of injunction abolished. (1)

7. That where a party obstinately retains possession of lands or other real property, after a writ of execution of an order for delivery of possession has been duly served, and demand of possession made, then, upon an affidavit of such service of the writ of execution and of such demand made there under, and a refusal to comply therewith, on the part of the person against whom the writ issued, the party issuing it be at liberty to issue not only the attachment for breach of such writ, but also the writ of assistance; and that the intermediate writ of injunction further commanding the party to deliver possession, be no longer necessary. (*a*)

SCHEDULES OF FORMS OF PROCESS IN EQUITY.

SUBPŒNA TO APPEAR AND ANSWER.

Subpœna to appear and answer.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We command you [and every of you, *where more than one defendant*] that within —— days after the service of this writ on you, exclusive of the day of such service, laying all other matters and excuses aside, you do cause an appearance to be entered for you in our Supreme Court of Judicature, at Fort William in Bengal, to a bill

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(1) New Rule. See Stat. 11. G. 4. and 1 W. 4, c. 36, § 11, R. 19. and Prop. 156, Chan. Com. Rep. ;—and see note (*a*) *infra*.

(*a*) "Where a party obstinately retains possession of lands after a writ of "execution of an order for delivery of such possession has been duly served, "and demand of possession made, and there be an affidavit of the service of "such writ of execution, and of such demand made, and a refusal to comply "therewith, the party prosecuting such writ of execution should be at liberty "to issue not only the attachment for breach of such writ, but also the writ of "assistance. The intermediate writ of injunction, commanding the party to "deliver possession, seems utterly useless. The result, probably, of that over-"caution which marked the infancy of the jurisdiction, and is attended with "the practical inconvenience of adding to the expense, without any equivalent "benefit."—Bea. obs. Prop. 156. Chan. Com. Rep.

——— filed against you by ——— and that you do answer concerning such things as shall then and there be alleged against you, and observe what our said Court shall direct in this behalf, upon pain of an attachment issuing against your person, and such other process of contempt as the Court shall award.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———, and in the ——— year of our reign.

Registrar.

Appearances are to be entered at the Equity Registrar's office in the Supreme Court.

SUBPŒNA TO REJOIN.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We command you [and every of you, *where more than one defendant*] that immediately after the service of this writ, you do appear in our Supreme Court of Judicature, at Fort William in Bengal, then and there to rejoin, and join in commission, if thereunto required, in a certain cause then depending, wherein ——— are complainants, and ——— are defendants.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———, and in the ——— year of our reign.

Registrar.

SUBPŒNA TO TESTIFY BEFORE THE EXAMINER.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We command you, [and every of you, *where more than one*] that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before the Examiner of witnesses in our Supreme Court of Judicature, at Fort William in Bengal, at his office, in the Court house, at such time as the bearer hereof shall by notice in writing

appoint, to testify the truth, according to your knowledge, in a certain cause, depending in our said Supreme Court, wherein ——— is complainant, and ——— is defendant, on the part of the said ———* and hereof fail not at your peril.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the ——— day of ——— in the year of our Lord, one thousand eight hundred and thirty ———, and in the ——— year of our reign.

Registrar.

SUBPŒNA TO TESTIFY VIVA VOCE IN COURT.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen Defender of the Faith, To ——— Greeting, We command you, [*and every of you*] that laying all other matters aside, and notwithstanding any excuse, you personally be and appear before our Justices of our Supreme Court of Judicature, at Fort William in Bengal, at such time and place as the bearer hereof shall by notice in writing appoint, to testify the truth, according to your knowledge, in a certain suit now depending in our said Supreme Court, wherein ——— is complainant, and ——— is defendant, on the part of the ———* and hereof fail not at your peril.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———, and in the ——— year of our reign.

Registrar.

SUBPŒNA TO HEAR JUDGMENT.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We command you, [*and every of you*] that you appear before our Justices of our

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* [In case of subpœna *duces tecum*, add] and that you then and there bring with you and produce, &c, and hereof fail not at your peril.

Supreme Court of Judicature, at Fort William in Bengal, on the ——— day of ——— next, or whenever thereafter a certain cause now depending in our said Supreme Court, wherein ——— is complainant and ——— is defendant, shall come on for hearing, then and there to receive and abide by such judgment and decree as shall then or there after be made and pronounced, upon pain of judgment being pronounced against you by default.

Witness Sir ——— Chief Justice at Fort William aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ———, and in the ——— year of our reign.

Registrar.

SUBPŒNA TO SHEW CAUSE AGAINST DECREE.

FORT WILLIAM IN BENGAL. } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We command you, that within ——— days after the service of this writ on you, exclusive of the day of such service, you do shew unto our Supreme Court of Judicature, at Fort William in Bengal, good cause why a certain decree made by our said Court on the ——— day of ——— last, in a certain cause wherein ——— is complainant, and ——— is defendant, should not be binding upon you. In default whereof, such decree will stand and be absolute against you.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the ——— day of ——— in the year of our Lord one thousand eight hundred and thirty ——— and in the ——— year of our reign.

Registrar.

SUBPŒNA FOR COSTS.

FORT WILLIAM IN BENGAL } VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, To ——— Greeting, We commaud you, ——— [*and every of you*] that you pay or cause to be paid

immediately after the service of this writ, to ——— or the bearer of these presents, sicca rupees ——— costs, by our Supreme Court of Judicature, at Fort William in Bengal, adjudged to be paid by you to the said ——— under pain of an attachment issuing against your person; and such process for contempt as the Court shall award in default of such payment.

Witness Sir ——— Chief Justice, at Fort William aforesaid, the day of ——— in the year of our Lord one thousand eight hundred and thirty———, and in the ——— year of our reign,

Registrar.

DECRETAL ORDER AND DECREES.

Additional Rule passed 7th January 1840.

6th. That in all cases in which it shall appear that certain preliminary accounts and inquiries must be taken and made before the rights and interests of the parties to the cause can be ascertained, or the questions therein arising can be determined, the plaintiff shall be at liberty at any time after the defendants shall have appeared to the bill, to move the Court on notice, that such inquiries and accounts shall be made and taken, and that an order referring it to the Master to make such inquiries, and take such accounts, shall thereupon be made, without prejudice to any question in the cause, if it shall appear to the court that the same will be beneficial to such (if any) parties to the cause as may not be competent to consent thereto, and that the same is consented to by such (if any) of the defendants as being competent to consent have not put in their answer to the bill, and that the same is consented to by, or is proper to be made upon the statements contained in the anwers of such (if any) of the defendants as have answered the bill.

Preliminary accounts and enquiries may be directed by the Court at any time after appearance, (1)

PROCESS.

Additional Rule passed 3d February, 1840.

It is ordered, that the 7th rule of the Supreme Court on its equity side, under the head of process be and the same is hereby repealed, and it is further ordered that in lieu thereof the following rule be substituted.

Repeals Rule under title "*Process*"

That where any party obstinately retains possession of lands, or other real property, after a writ of execution of a decree, or an order for delivery of possession has been duly served, and demand of possession made, and upon an affidavit of such service of the writ of execution, and

Where possession retained after writ of execution, or order for possession, and demand, and affidavit made.

(1) See orders in Chancery, 9th of May, 1839—No. 52—signed Cottenham, C. Langdale, M. R. Launcelot Shadwell, V. C.

Writ of assistance to issue; attachment and injunction unnecessary. (1)

of such demand made thereunder, and a refusal to comply therewith on the part of the person against whom the writ issued, the party issuing it shall be at liberty, *upon an affidavit of service of the writ of execution, and demand of possession and refusal,* to obtain the usual order of course for the writ of assistance to issue, and that the intermediate writs of attachment and injunction further commanding the party to deliver possession, or any other writ shall be unnecessary.

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(1) New Rule, see former R. *ante* 68 and note. The former rule was the same as Chan. Prop. 156. the present rule is nearly similar, but adopts the precise words of R. 19. I. W. 4 c. 36, framed on the recommendation of the Chan Com. It was found expedient, on some doubt. having arisen as to the construction to be put on the rule as it formerly stood, to adopt the precise words of the rule of the Court of Chancery.

ECCLESIASTICAL RULES.

ECCLESIASTICAL RULES.

GENERAL.

1. All writs, precepts, rules, orders and mandatory process shall issue from, and be returned into office of the Registrar, and shall be prepared, signed and dated by him, and tested, subscribed, sealed, executed, and returned in the manner directed in and by the general rules, except where otherwise ordered by the following rules; but he shall not issue any citation on applications for administration, unless by an order of Court, or of one of the Judges thereof.

All process, orders, &c. to be issued by Registrar;

No citation on applications for administration without order.

See Genl. R. 20

2. That Mondays and Thursdays in term and sittings, and Tuesdays and Fridays in vacation be styled Court days; and ecclesiastical causes shall only be set down for hearing and heard in term or sittings, unless the Court shall otherwise order.

Court days; causes to be heard only in term or sittings, unless otherwise ordered. New Rule. See Hyde's MSS. cases.

3. The Registrar shall deliver to the keeper of the records all petitions for probate and administration, and wills, and all the proceedings had thereon, and all bonds, and other muniments relative thereto, in one year from the time of such applications and proceedings, and all accounts and inventories, in one year after the same have been filed, and likewise all proceedings and decrees in ecclesiastical causes, where no appeal has been allowed, in one year after the making of the decree, and also all proceedings in ecclesiastical causes, where one whole year shall have elapsed without either party proceeding in the cause.

When Registrar to deliver proceedings, wills, &c. to Record keeper.

Part of former Eq. R. 62.

The like as to Admiralty proceedings See former Eq. R. 63.

4. That the foregoing third rule be extended to all decrees and proceedings on the admiralty side of the Court.

Registrar to report on first day of term all decrees pronounced and libels dismissed, and other proceedings;

5. The Registrar, on the first day of every term, shall give in a report in writing to the Court of all the decrees pronounced and libels dismissed in the preceding term; and also a report of all causes wherein one year hath elapsed without either party having proceeded therein, and of all petitions for probate and administration, wills, security bonds, inventories, and accounts current filed from the first day of the preceding term to the date of the report; and the said several reports shall be read in Court, and marked, and afterwards delivered to the keeper of the records; and at the periods when the records, &c. of any term ought to be delivered to the keeper of the records, according to the preceding rule, he shall report in writing to the Court, whether the same be duly delivered by the Registrar according to his said several reports, and specify any difference or variance, if there should be any.

To be delivered to Record-keeper.

Who is to report delivery, and specify variance if any.

See former Eq. Rs. 64 & 65.

PROBATE.

Applications for probate how to be made, and supported,

1. Applications for probate in common form of a written and perfect will, written or subscribed by the testator's own hand, shall be made by petition with the will and the affidavit of the executor annexed, stating the time of the testator's death, (1) that the writing annexed is as he believes the last will of the deceased, that he is the executor

where deceased is a British subject.

(1) In Dean v. Davidson, 3 Hagg. 554. H. T. 1831. After the case had stood over some time for further information, as to the Testator's death, the Court granted to a residuary legatee administration, (with a will of 1801 annexed,) on affidavits that the party went to Demerara in 1803, and had not been heard of since 1804, that his mother, who died in 1826, believed him to have died many years before, a bachelor, and without a later will, and that diligent enquiries had been lately made at Demerara, though without obtaining conclusive evidence of his death. But as the testator might possibly not be dead, the Court directed the securities to justify. See also cases there cited. Doe v. Griffin, 15 East, 293. Doe v. Jesson, 6 East, 85. 3 Bac. Abridg. 369. Doe v. Deakin, 4 Barn and Ad. 433. 1 Jac. 1, c 11. § 2, as to Bigamy, 19 Car. 2 c. 6 as to Leases for lives.

therein named, and that the deceased, if a British subject, left effects within the jurisdiction of this Court, and, if other than a British subject, within the Calcutta jurisdiction (1) of the Court, and such other proof if any as the Court shall require.

If other than a British subject.

See Bombay Eccl. R. *tit.* "Probate" 1.

2. In cases where the will is written in any of the eastern or foreign languages and characters, there shall be a translation thereof annexed by one of the sworn interpreters of this Court, if it be a language for which an interpreter is appointed, or if it be any other language then by any person competent to translate the same, in which last case such translation shall be accompanied by an affidavit of the translator, that he reads and perfectly understands the language and character of the original, and that the same is a true and accurate translation.

Where Will in Eastern, or Foreign languages, translation to be annexed.

How same to be verified.

See B. Eccl. R. *tit.* "Probate" 1.

LETTERS OF ADMINISTRATION.

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1. Applications for letters of administration shall be made by petition, stating the time and place of the deceased's death; the family or other relatives of the deceased and their respective residences, and in case they shall be absent from the jurisdiction of the Court, whether they have any known agents within the jurisdiction of the Court; the right in which the petitioner claims to administer, and the amount of the assets which are likely to come to his hands, which petition shall be verified by affidavit to be filed therewith, and the necessary citations shall then issue, and the application shall be advertised on Monday in three successive weeks in the *India Gazette*.

Applications for administration, how to be made and supported.

Citations to issue.

To be advertized 3 successive Mondays in *India Gazette*.

See B. Eccl. R. *tit.* "Administrator," and see former Eq. R. 70.

2. When the widow applies for administration, a citation shall issue to the next of kin, and when the next of

Citations, when by widow or next of kin.

(1) As to these words "*within the Calcutta jurisdiction*" see, in Appendix of decided cases, the decision of the Court in the goods of Bebee Muttra, deceased.

See B. Eccl. R. *tit.* "Administrator," 3, varied.

kin applies, a citation shall issue to the widow, if any, and another to the next of kin next entitled.

When by a creditor.

3. When a creditor applies, a special citation shall issue to the widow if any, and next of kin, provided they shall be resident within the jurisdiction, or have any known agent resident within the jurisdiction, and a general citation shall also issue to all persons interested in the goods of the deceased, and all such citations shall be served personally upon such known agents when they are within the jurisdiction.

See B. Eccl. R. *tit.* "Administrator," 3, varied.

Application by creditor what to state.

4. In all petitions by creditors for letters of administration, it shall be stated particularly how the debt arose, and whether the party has any and what security for the debt, and no administration shall be granted to any person claiming as a creditor where the debt arises from the balance, or the supposed balance of an open or unsettled account, or where the creditor has security for the debt. (1)

See B. Eccl. R. 7, and see former Eq. R. 74.

Average bond to be executed by creditor, administrator.

5. When letters of administration shall be granted to any creditor, it shall be part of the condition of the administration bond, that he shall pay all debts of equal degree in equal proportions without any preference of his own debts, and in a due course of administration not preferring his own debt. (2)

See B. Eccl. R. *tit.* "Administrator," 8.

Citations when returnable,

6. All citations issued at the instance of parties applying for probate or letters of administration shall be returnable in four days from the day of service, if the parties to be cited live within the town of Calcutta or ten miles thereof, and in case the party live above ten miles from Calcutta, the citation shall be made returnable on such day certain as the Court or a Judge thereof shall direct; and where a creditor applies for administration a copy of each citation shall be posted by the Sheriff at each

where to be affixed when creditor applies.

(1) See Aitkin *v.* Ford, 3 Hagg. 193. The Court before granting administration to a creditor, requires an affidavit *(inter alia)* that he has no other security; and if the person first entitled to the grant is abroad, and the service of the decree is on the Royal Exchange, that such person has no agent in this country.

(2) See Toller. 106. Williams on executors. I vol. 264.

of the following places, viz., the lower verandah of the Court house, at the Bankshall, and in the Exchange Rooms.

New Rule.

7. When the application is made by the attorney of an executor or administrator resident in England, Scotland or Ireland, or at any other place beyond the jurisdiction of the Court, the original will, or an exemplification thereof, or an exemplification of the letters of administration, must be annexed to the petition and the power of attorney shall be verified to the satisfaction of the Court or a Judge.

When attorney of executor or administrator applies, how will and power to be verified. See 55 G. 3, c. 84, § 2.

8. If no caveat shall be entered after the usual advertisements shall have been duly published, the citations being duly issued and returned, letters of administration shall be forthwith granted to the person applying for the same, such person having first executed the usual bond to the Registrar, with two or more able sureties in such sum as shall be deemed adequate to the value of the estate and effects; And (1) justifying security shall be required at the discretion of the Court or a Judge, according to the circumstances of each case.

Administration bond. How to be executed. Justifying security may be required. See B. Eccl R. *tit.* "Administrator," 4, varied.

9. If caveat be entered, unless an affidavit be filed within eight days after such entry, stating the right and interest of the caveator and the grounds of objection to the application, such caveat shall not prevent the granting of probate or letters of administration, and no affidavit

Caveat, to be supported by affidavit filed in *eight* days.

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(1) See Aitkin *v.* Ford, 3 Hagg. Rep. 194 195, note *(a)*. "The Court before "granting administration to a creditor, requires an affidavit of the amount of the "effects, and of the debt, and that the creditor has no other security. Justifying "security is called for at the Court's discretion, according to the circumstances "of each case, save that there is one general rule, that in all cases where there "is not a personal service of the decree on the party or parties having a prior "claim to the grant, justifying securities are required; and if the party first "entitled is abroad, the decree must be served on the Royal Exchange and on "his agent, or an affidavit must be made that he has no agent in this country.

"When the property is large, and exceeds, to a considerable extent, the "amount of the interest of the party applying for the grant, the Court—even "when the party first entitled to the grant is absent—sometimes requires to be "satisfied that he has had notice of the intention to apply for such a grant, and "frequently directs the matter to stand over till sufficient time has elapsed, "since the service of the decree, for an appearance to be given."

shall be filed after the expiration of the said eight days, without the special leave of the Court or a Judge thereof, being first had and obtained,

See B. Eccl. R. "Administrator," 5.

Caveat may be set down by either party after eight days.

10. Either party, where an affidavit has been filed in support of the caveat, may after eight days from the entry of the caveat, set down the same with the Registrar to be argued, giving six days notice thereof to the adverse party or his proctor, any affidavits intended to be used by either party in the arguments, having been previously filed in Court, and which each party shall have an opportunity of inspecting, and taking copies of, if required. The affidavit on both sides being read, the advocate for the caveator shall be first heard in support of the caveat, and the same shall be disposed of in a summary way, unless the Court shall direct the parties to proceed in a more solemn manner.

All affidavits to be previously filed by both parties.

Hearing.

See B. Eccl. R. "Administrator," 6.

Executors or administrators neglecting to file accounts, Citation to be issued by Registrar. Part of former Eq. R. 119, of 1829.

11. In all cases in which executors or administrators shall neglect to file their inventories or accounts for two months beyond the time allowed to them by law, the Registrar is ordered to issue the necessary citations and other process, to compel the filing of the same, and to charge the parties making default with the costs thereof.

When Registrar may act as Proctor.

12. In cases respecting the filing of inventories or accounts of assets or marriage licences, but in no other cases, if the Registrar shall be called upon by any party residing at the time beyond the limits of Calcutta, to do any act, or transact any business for which no fee shall be allowed to him as Registrar by any table of fees, he may charge the fees allowed to a proctor for the like business; but the Registrar shall not transact any business as a proctor for any person, who is at the time an inhabitant of Calcutta.

See reference to preceding rule.

PROCEEDINGS BY LIBEL.

Libels and other pleas to be filed and entered by Registrar. See B. Eccl. R. *tit.* "Libel," 1.

1 Libels, answers, and other pleadings shall be filed with the Registrar, who shall keep a book, and enter the names of the promovent and impugnant, or party cited in each suit or proceeding, and the day and year on which all pleadings shall be filed and proceedings had.

2. In all libels and allegations it shall be averred that the impugnant is and how he is subject to the jurisdiction of the Court.

Impugnant to be stated subject to jurisdiction. See B. Eccl. R. *tit.* "Libel," 2.

3. On certificate of libel or allegation (whether original or otherwise) being filed and affidavit made, that the impugnant or party to be cited is, and how he is subject to the jurisdiction of the Court, a citation shall issue, and the impugnant shall appear within the time limited for his appearance, in default of which, if the Sheriff shall have returned the citation that he has served the party, proclamation shall be made, calling upon him to appear, and in default thereof, he shall be pronounced contumacious.

Citation to issue on all libels or allegations (original or otherwise.) Appearance If not, and return, served, Proclamation. In default, order of contumacy. See B. Eccl. R. "Libel," 3.

4. If the party to be cited absents or conceals himself, and the primary citation be returned *non est inventus*, and oath made, that it is believed he absents himself to avoid service, a citation *viis et modis* shall be the second process to be issued, which shall be personally served, if possible, otherwise the same shall be fixed upon the door of the parties' last place of abode, if known, and if not, then at the places where the Sheriff is directed to affix all public notices of process.

Party absenting, and return *non est inv.* and affidavit of intention to avoid service, Citation *viis et modis.* Service how to be made. New Rule.

5. Every citation, citatory decree or other mandatory process, whereby a party shall be cited to appear or do any act in this Court, shall be directed to the Sheriff, who shall serve the same in the manner following, except where otherwise directed by the rules of the Court; that is to say, he shall cause a copy to be delivered to the person cited by the said writ, if he can be found; if not, then to one of his family, the body thereof, under the seal of the Court, having been first shewn to him; and the Sheriff shall specially certify and return in what manner he has served the said process.

Citations to be directed to Sheriff. How he is to serve and return same. New Rule.

6. All articles, libels, allegations, answers, exceptions or other pleadings, and interrogations filed in this Court shall be signed by an advocate, and be as short and concise as the nature of the case will admit, and shall be broken into separate positions, articles or questions, as the case may be, and all facts are to be alleged under separate

Libels and other pleadings and interrogatories to be signed by advocate. To be concise, in separate articles, or

questions, and separate heads.

New Rule.

heads, according to the subject matter or the order of time in which they have occurred.

Citations how returnable.

Where party in Calcutta, or within 10 miles.

If beyond 10 miles.

New Rule.

7. In case the impugnant or party to be cited live within the town of Calcutta or ten miles thereof, the citation or process shall enjoin the party to be cited to appear within four days after service, if it be a Court day, otherwise on the next Court day following, the expiration of four days after service, and in case the party live above ten miles from Calcutta, the process shall command the party to appear within such time after service as the Court or a Judge thereof shall direct.

Party cited, to put in answer or pleading, within 8 days after appearance.

Entitled to 4 weeks as of course.

No further time but by special leave.

See B. Eccl R. "Libel," 5.

8. The impugnant or party cited to appear shall put in his exception, answer or other pleading to the articles, libel or allegation, within eight days after appearance, adding to such eight days any time which may elapse between the time of ordering an office copy of the articles, libel, or allegation, and the same being delivered after which time, the party impugnant shall be entitled upon motion as of course to four weeks further time for that purpose, and no further time shall be allowed except upon special application to the Court or a Judge.

After exception, answer, or other pleading, opponent to have 14 days to take further step.

New Rule.

9. After exception, answer or other pleading filed, and a copy thereof delivered to the opposite party, he shall have fourteen days to file his next allegation to apply for a term probatory, or to take such other steps as he shall be advised, and no further time shall be allowed, unless by order of the Court or a Judge in vacation.

Term probatory.

Registrar to examine witnesses.

New Rule.

10. The term probatory shall be three weeks, and the depositions of witnesses shall be taken before the Registrar.

When causes to be set down, after publication, and citation to hear sentence.

See B. Eccl. R. "Libel," 8.

11. If publication pass in vacation, all causes shall be entered with the Registrar on or before the fourteenth day of the following term, but no cause shall be set down for hearing till fourteen days after publication passed, nor till six days after the service of the citation to hear sentence.

If promovent neglect, impugnant may, and for when.

12. If the promovent neglect to set the cause down for hearing within the first term after publication passed, the impugnant shall be at liberty to do so to be heard in the

sittings thereafter or in the ensuing term, and, if upon the day appointed for the hearing, the impugnant shall be dismissed for default of the promovent's appearance, no such cause shall be restored to the cause board, unless the promovent shall, within fourteen days, file a petition for that purpose, and pay all the costs incurred by his default.

If dismissed for default of promovent, cause not to be restored except on petition, and costs.

See B. Eccl. R. "Libel," 9.

13. That when any exhibits are pleaded in supply of proof, the proctor of the adverse party shall, on the day on which the plea is admitted, declare whether he confesses or denies the hand-writing as pleaded of such exhibits; and if the hand-writing be denied, and afterwards proved, the costs occasioned by the proof shall be paid by the party who denied the hand-writing, unless the Court shall think fit to direct otherwise.

When exhibits pleaded and admitted, adverse proctor to confess or deny hand writing; Costs when denied.

New Rule. See R. by Sir John Nicholl.

14. That in all cases, the Court may, upon application made to it, direct security for costs to be given by either or all of the parties.

Security for costs, discretionary in all cases.

15. All cases not provided for by the preceding rules, shall be regulated and governed, as far as circumstances will permit, by the rules and practice used in like cases in the diocese of London.

In cases not provided for, practice of Diocese of London to prevail.

New Rule See Charter § 22.

THE REGISTRAR AS EX-OFFICIO ADMINISTRATOR.

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1. The Registrar upon his admission shall forthwith enter into a bond with two sufficient sureties to the junior Justice of the Court, in the penalty of sicca rupees one hundred thousand, conditioned for the due execution of his said office to remain in force until the expiration of two years after the death, resignation, removal from or other vacating of the said office by the Registrar and no longer.

Registrar to give security for due execution of office; To remain in force for two years after death, &c.

Part of former Eccl. R. 2. and See Bombay Eccl. R.

2. It is ordered and declared, that all letters ad colligenda and of administration vested in the present Registrar of this Court or in any former Registrar, shall

All administrations vested in former Registrar to vest in

Registrar for time being, and to be in name of office only.

be transferred to and vested in the present next succeeding and every future Registrar of this Court, and that all future letters ad colligenda and letters of administration granted under or by virtue of the Act of the 39 & 40 G. III. c. 79, shall be in like manner granted to and vested in the Registrar of this Court for the time being by his name of office only.

See former Pl. R. 103.

To enter in a book separate accounts of each estate, &c.

3. When letters of administration or ad colligenda shall have been granted to the Registrar under the Statute 39 & 40 Geo. III, he shall, in all cases, besides filing an inventory and account current according to the tenor of the administration bond and usual course of the Ecclesiastical Court, enter into a book to be kept for that purpose separate accounts of each estate, and of all such sums of money, bonds, and other securities for money, goods, effects, and things as shall come to his hands or to the hands of any person employed by, or in trust for him, and likewise of all payments made on account of the said estate and of all debts due by or to the same, which said books shall be kept in his office and shall be open for the inspection of all persons who may have occasion to inspect the same during office hours, paying the usual fee and no more.

and of all monies, securities, effects and debts;

Books open to inspection on payment of usual fees.

Part of former Eq. R. 74. and see 55, G. 3, c. 84, § 5.

When cash balance of estate amounts to 500 Rs to be invested in securities of Government.

4. Whenever the balance of cash in the hands of the Registrar belonging to any one estate shall amount to 500 Company's rupess, the Registrar shall invest the same on the account of such estate in the purchase of securities of the United East India Company, bearing interest.

Part of former Eq. R. 74.

When to deliver to Court schedule of monies, and securities received, and payments made on account of each estate, and balances,

Schedule of balances paid to representatives to be filed and published in

5. The Registrar shall, on the first day of the second and fourth terms in every year, deliver in open Court a schedule of all sums of money, bonds or other securities received on account of each estate remaining under his charge, together with the payments made thereout and the balances, and also a schedule of all administrations whereof the balances shall have been paid over to the persons entitled to the same, since the period of exhibiting the last schedule, specifying the amount of such balances, and the persons to whom paid, which schedules shall be then filed

of record and shall, within fourteen days afterwards, be published in the *Calcutta Gazette* by the Registrar, who shall likewise cause copies thereof in triplicate to be delivered to the Chief Secretary to the Government of Bengal, informing him, that by the Act 55 of George III. the Government is directed to transmit the same to the Court of Directors of the East India Company, who, upon receipt thereof, are to cause the same to be published in the *London Gazette*.

Calcutta Gazette. Copies to be delivered to Chief Secretary to Government to be transmitted to Court of Directors.

Part of former Eq. R. 74, and see 55 G. 3. c. 84, § 5.

6 The Registrar shall transmit through the Chief Secretary to the Government of Bengal to the Court of Directors of the East India Company, quarterly, true and attested copies of all wills of which probates have been granted, and of all inventories and accounts filed by executors and administrators, and a schedule of all administrations granted during the three months preceding.

When and how to transmit to Court of Directors, copies of wills, accounts of executors, &c.

7. And whereas it is by the said act of the 39 & 40 George III. directed, that the Registrar shall pass his accounts according to the course of the Court of Chancery; it is ordered, that as soon as the Registrar is enabled to close the account of any estate or at any other time, when he may be so ordered by the Court, either officially or on the application of any person interested in the said estate, he do file his said account in the office of the Master of this Court, and proceed to pass the same as Receiver's accounts are now passed, and if the same shall be allowed, the said account of each estate and all the papers, receipts, and vouchers of the same, together with a true and perfect list of the same, shall be dilivered over to the keeper of the records, to be by him kept for the benefit of all concerned.

How to close, file and pass his acccounts, &c.

Part of former Eq. R. 74.

8. The Registrar shall, with all convenient speed, inform himself who are the persons entitled to the residue of any intestates estate, and shall as soon as possible inform such persons of all such circumstances and particulars relative to the said estate as it may be necessary for them to know, in order, that they may apply at the time prescribed by law for the administrators filing his accounts, and in case the Registrar shall not be able to

To ascertain who entitled to residue of estate, and give them necessary information, when he cannot discover, to advertize for next of kin in Calcutta Gazette, London Gazette,

and in Edinburgh or Dublin newspapers, as case may require.

discover who are the next of kin of any person dying intestate or shall see reason to doubt concerning the same, he shall cause an advertisement to be inserted in the *Calcutta Gazette*, calling the next of kin to appear for their interest, and shall cause a similar advertisement to be inserted in the *London Gazette*, if the intestate was a native of England, in one of the Edinburgh newspapers, if he was a native of Scotland, or in one of the Dublin newspapers, if he was a native of Ireland.

Part of former Eq. R. 74.

To deposit all Government securities in the Treasury, and take receipts with certificate of particulars.

9. It is ordered, that when and as often as any bonds, notes, or other government securities shall come to the hands of the Registrar, or shall be purchased by him with any money which shall come to his hands or to the hands of any person employed by or in trust for him by virtue of any letters ad colligenda or of administration, he shall forthwith deposit the said securities in the treasury of the said United Company, and take the receipt of the Sub-treasurer for the same, together with a certificate specifying the number, date, and sum, of each security so deposited, and to what particular estates they belong or appertain, signed by the said officer, declaring the same to have been received by him for the said Company in deposit, and shall file such receipt with the keeper of the records.

To file receipts with keeper of records.

Part of former Eccl. R. 2.

When necessary to dispose of securities, to certify same with particulars to Chief or other Justice.

10. Whenever it may be necessary for the purpose of any estate to sell or dispose of any securities so deposited in the treasury, or to pay or deliver the same over to the person entitled to the residue of any estate, the Registrar shall certify the same, with the numbers, dates, and sums, of the securities wanted and for what purpose, and on account of what estate, to the Chief Justice or one of the Justices of this Court, who, on the same, appearing necessary, shall by order under his hand direct the Registrar to apply to the Sub-treasurer or other officer acting for the treasurer as aforesaid, and receive the same on granting his receipt; and which certificate, order, and receipts shall be sufficient voucher and acquittal, to the said United Company and their officers for any securities so paid out or delivered over to the Registrar under the said certificate and order.

Proceedings thereon.

Part of former Eccl. R. 2.

11. The Registrar upon any interest falling due upon any of the said securities so deposited in the treasury, shall attend at the treasury, and receive all such sums of money as may have become due for interest.

To attend treasury and receive interest on securities.

Part of former Eccl. R. 2.

12. When any of the securities so deposited in the treasury shall become payable, the Registrar shall in like manner attend at the treasury, and receive the same and the monies due thereon, and forthwith re-invest the amount thereof in the purchase of other securities of the said United Company, and again deposit the same in the manner hereinbefore directed, and the certificate and receipt of the Registrar shall be a sufficient voucher and acquittal to the said United Company and their officers for every payment to him of all such interest as aforesaid, or principal and interest of bonds, notes, or other securities for money so paid off.

When securities payable, to attend treasury and receive and reinvest amount;

receipts of Registrar sufficient voucher to Company.

Part of former Eccl. R. 2.

13. Whenever the aggregate sums of money in the hands of the Registrar, whether arising from balances of the respective estates committed to him, and which do not amount to sufficient for the purpose of investing the same in the purchase of securities of the said United Company, on account of each respective estate, or from any other cause, or on any other account whatsoever, do amount altogether to sicca rupees ten thousand, he do report the same to the Court for their direction on the subject.

When to report aggregate amount in hand to the Court.

Part of former Eccl. R. 2.

Additional Rule, passed 7th January, 1840.

14. Ordered, that in all cases where administration is granted to the Registrar, all sums remitted by him to parties entitled to the residue in Great Britain or Ireland shall, in the absence of express directions from such parties be remitted in bills on Her Majesty's Treasury, or in those of the East India Company, or in securities of the Government of England or India.

Remittances by Registrar.

TAXING OFFICE RULES.

TAXING OFFICE RULES.

1. On or before the last day of the fourth term in every year, the Registrar and Prothonotary shall each present to the Court a table of the established fees, and in case it shall be necessary to make any addition thereto, or alteration therein, proper measures shall be taken to ascertain the concurrence of the Governor-General in Council for such additions or alterations, and as soon as the table shall be finally settled and approved, the seal of the Court shall be affixed thereto, and it shall be published in the first week in January, or as soon after as may be, in the *Government Gazette*, and such other public newspapers as the Court shall direct, and a copy of the gazette or paper containing such table, shall be sent to the Board of Commissioners for the affairs of India.

Registrar and Prothonotary to present a table of established fees to the Court on or before last day of fourth term.

In case alterations required, what to be done and how to be published.

See former Pl. R. 115, of 1829.

2. Neither the sheriff, nor any officer, attorney or proctor shall, upon any pretence, nor for any reason whatsoever, demand or receive any other fee, poundage, or commission, nor make any other charge in his capacity of sheriff, officer, attorney, or proctor, than such as shall have been established by the subsisting table of fees, or by some written and subsisting order of the Court, made subsequent to the last publication of the table of fees according to the above rule, and with the express concurrence of the Governor-General in Council, and whenever any thing shall be required to be done by the sheriff or any officer, attorney, or proctor, for which no fee or charge shall have been provided and established, the sheriff or such officer, attorney, or proctor shall be at liberty to bring the same immediately to the notice of the Court by petition in such manner that a written rule or order may be made respecting the same, and if any person

No officer or attorney to receive any fee, poundage or commission other than established by table of fees.

Where no fee provided, how to proceed.

holding any office in Court, shall either on account of expediting any business in the Court, or any other account or pretence whatsoever take or permit any person employed by him to take any gift, present, or gratuity, from any of the suitors of the Court, he shall be immediately and at once dismissed from his office without reference to any other pains, penalties, or forfeitures, to which by law he may be liable.

Penalty for receiving any gift, &c.

See former R. 8, of 1831 & 1832.

3. That the office of the taxing officer shall be open on every day on which the Court is sitting, or on which any Judge, according to the ordinary practice of the Court, shall attend in chambers, and during the same hours, and on such other days and times, as may be necessary for the purpose of carefully examining and taxing all bills of fees and costs; And, in all cases, in which the rules of the Supreme Court do not sufficiently declare what business or proceedings may be charged for in the bills of fees and costs, or in what manner, and by what steps any part of the business or proceedings ought to be conducted, the taxer of costs is directed to take the rules and practice of the superior Courts in England as his guide.

Taxing office when to be open.

When rules of Supreme Court not sufficiently explicit, rules of superior Courts in England to be taken as a guide.

Part of former R 9, of 1831 & 1832.

4. The taxing officer shall keep a book in which, from time to time, he shall enter, in writing, a statement of any doubts or difficulties which, in the course of taxation, may have arisen as to the interpretation or construction of any of the rules of the Court or the table of fees, and on which it may be desirable that the opinion of the Judges should be ascertained, and shall submit the same at convenient opportunities to the Judges in chambers, and obtain their decision upon the points in question; And in every case upon which any attorney or proctor intends to apply to the Court or any Judge thereof for a retaxation of any bill, a particular in writing of the objections and of the grounds thereof must be left with the taxing officer within one week from the day on which the taxed bill shall have been ready for delivery, in order that the taxing officer, in case of any mistake, may retax the same without charging any additional fee; And every application to the Court, or any Judge thereof

Taxing officer to minute doubts on taxation, for the decision of the Judges.

Attorney applying for retaxation, when to leave particular of objections with taxing officer.

Application to Court for retaxation, when to be made.

for retaxation of any bill of costs, must be made at the latest in the term or vacation immediately following the term or vacation, in which the party objecting shall have had notice of the taxation.

See former R. 10, of 1831 & 1832.

5. That three times in the year, that is to say, within a fortnight from the last day of the second, third and fourth terms, the sheriff and all the officers of the Court shall deliver to the taxer of costs separate general accounts of all business done in their several offices by each attorney or proctor respectively, and of the fees, poundage, or commission charged for the same up to the last day of the term; and it is ordered, that the taxing officer do upon the delivery of the said general account, appoint a convenient time for the sheriff and officers and the attorneys and proctors to attend before him for the taxing of their accounts, and that the taxing officer at the time so appointed for each account respectively, do examine the account and correct the same, and do certify in writing upon the account the amount he allows and affix his signature thereto, and upon every such taxation of any officer's bill, the copy thereof which, previously to such taxation, shall have been sent to the attorney or proctor, or the officer, shall be deposited and left with the taxing officer, in order that the same may be filed in his office.

Officers of the Court to deliver to taxing officer for taxation three times a year. separate accounts of all business done, and poundage and commission charged to attornies.

See former R. 11. of 1831 & 1832.

6. Every attorney and proctor of the Court shall once, at least, in every year, make out and deliver for taxation, to the taxer of costs, the whole of his bills of costs in any suit or proceeding, so that the taxer may never have to enquire respecting any item of an older date than one year previous to the delivery of the bill, and every sum of money which shall have been advanced to any attorney or proctor for costs shall be faithfully and accurately stated at the foot of the bill, and strictly accounted for, and if there shall be no money to be so accounted for, there shall be a declaration to that effect, at the foot of the bill, and signed by the attorney or proctor; And if any attorney or proctor shall receive any sum of money, or payment for untaxed costs without duly accounting for the same, and

Attornies once a year to deliver for taxation all bills of costs in any suit or proceeding.

Every sum advanced for costs to be stated and accounted for,

Penalty for not accounting for the same, and

having his bill taxed within one year from the date of such receipt or payment, he shall be liable to have his name struck off the roll; And it shall be the duty of the taxing officer, from time to time, to report, for the information of the Judges, the name of every attorney or proctor, who may appear to be chargeable with the non-observance of this rule.

having bill taxed within one year. Taxing officer to report defaults.

See former R. 12, of 1831 & 1832.

7. Three clear days before the commencement of the first, third, and fourth terms, every attorney and proctor shall pay the sheriff and the officers of the Court the whole of the fees and sum total of every bill allowed by the taxer of costs as due to them for his business up to the close of the preceding term; and if it should be his intention to dispute any charge and claim a repayment, or reduction thereof, he shall be at liberty to bring it to the notice of the Court on the first day of any of the abovementioned terms; and on the day immediately preceding the first day of each of the abovementiond terms, every officer of the Court and the sheriff shall deliver to the taxer of costs a list or schedule containing the name of every attorney or proctor, who shall have made default in paying the fees due from him, and allowed by the taxer of costs, and of the amount of fees in the payment of which default shall have been made.

Three days before 1st, 3d, and 4th terms, attorney to pay officers amount taxed as due to close of preceding term.

Attorney may appeal to Court;

When officers to deliver to taxing officer lists of defaulters.

See former R. 13, of 1831 & 1832, altered, and part omitted.

8. On the third day of each of the said terms, the taxer of costs shall deliver to each of the Judges, and shall affix upon a board which shall be suspended in some conspicuous part of the room in which the Supreme Court is held, a list or schedule comprehending the whole of the lists or schedules which, on the day before the first day of the term, may have been delivered to him, according to the preceding rule, excepting always the names of any attorney or proctor who, on the first day of the term, may have obtained any order of the Court for the hearing of any objection by them made to any taxation of any officer's bill; but if such objections, upon the hearing of the same, shall be overruled by the Court, the name of every party making such objections shall be then entered upon the said board, and such entry or insertion

Taxing officer on 3d day of said terms to deliver to Judges a list of schedules delivered to him according to preceding rule and affix same upon a board to be suspended in Court, except when objection made by attorney until overruled.

shall have the same effect as if the name had stood there from the first; and at any time before the last day of the same term it shall be lawful for any attorney or proctor whose name shall appear in any such list, or schedule or upon such board as aforesaid, and who shall have paid or tendered the whole amount of fees due to the officers and sheriff, to apply to the Court to have his name erased from such list, schedule, or board; And on the last day of each term, every attorney or proctor, whose name shall remain on such list, schedule or board, shall be prohibited from acting as an attorney or proctor until further order of the Court, and unless within six months thereafter upon the payment of the fees so due as aforesaid, he shall have obtained the leave of the Court to resume his practice, the name of every such attorney and proctor shall be removed from the roll; And every attorney or proctor who during such prohibition shall, directly or indirectly, carry on business as an attorney or proctor, either in the Supreme Court, or the Court for the relief of insolvent debtors, or receive, or ask any payment whatever for any business to be by him carried on, shall have his name removed from the roll.

Attorney how to get name erased.

Penalty for practising while names remain on the list.

See former R. 14, of 1831 & 1832.

9. Upon the delivery of any bill of costs for taxation, the taxer of costs shall fix the day on which it will be taxed, and shall deliver a written memorandum thereof to the attorney or proctor who shall have presented such bill; and in every case of costs, for which judgment is about to be entered, or which shall have been allowed by any decree or order made at any hearing of a suit in equity or in the Court of Admiralty or Ecclesiastical Court, the client shall be duly summoned by the taxing officer to attend the taxation, unless the taxing officer shall, in the exercise of his discretion, see fit to dispense therewith, and the taxing officer is particularly directed in all cases in which it can be done, to see the client himself, and as far a possible to avoid the intervention of native mookteers or managers.

Taxing officer to fix day for taxation on delivery of bill of costs.

Client in what cases to be summoned.

To see client himself if possible.

See former R. 15, of 1831 & 1832.

10. The taxer of costs shall not tax any bill of costs, for any attorney or proctor, unless the bill shall have been delivered to him by the attorney or proctor himself,

Taxing officer not to tax any bill unless deli-

vered or signed by the attorney,

or signed with his name in his own hand-writing; And every attorney and proctor is hereby required to attend at all other times at which the taxing officer may think his attendance necessary for the purpose of taxation, and, in case of any wrong charge being wilfully made in any bill of costs, it shall be the duty of the taxing officer, without delay, to bring it to the notice of the Court, or of one of the Judges thereof.

To bring any wrong charge, wilfully made, to notice of the Court.

See former R. 16, of 1831 & 1832.

Taxing officer upon taxing the costs, to make general examination of proceedings;

11. Upon taxing the costs for which judgment shall be about to be entered, or which shall have been allowed by any decree or order made at any hearing of a suit in Equity, or in the Court of Admiralty or Ecclesiastical Court, it shall be the duty of the taxer of costs, to make a general examination of the course of the proceedings, on which such costs shall have arisen, and if he shall find that any part of such proceedings attended with costs has been injuriously or unnecessarily occasioned by the culpable negligence or improper conduct of any attorney or proctor, he shall not allow any charge for the same without the matter being brought to the notice of the Court, and for the better enabling the taxer of costs to make such inquiry, the officers of the Court shall allow him, without fee to examine the proceedings in the different offices, and the Master shall allow him, for that purpose, to inspect and examine, without any charge or fee, the minute book which, by the rules of the Court, the Master is directed to keep of all proceedings in any matters referred to him, and the taxer shall be at liberty to report to the Court any matter arising out of this rule on which either himself or any of the parties interested may desire that the decision of the Court shall be obtained.

if proceedings unnecessary, by negligence or improper conduct, not to allow any charge for the same.

See former R. 17, of 1831 & 1832.

If cause struck out of paper in consequence of negligence, of attorney, no attendances in Court thereon to be allowed.

12. No attorney or proctor shall be allowed to charge for any attendance in Court during the time that the cause may have been in the paper for trial or hearing, if it shall have been subsequently struck out of the paper, in consequence of any negligence or want of due diligence on the part of the attorney or proctor; And no attorney or proctor, upon the ground of non-payment of costs by any client, shall be at liberty to withdraw from the conducting of any suit or proceedings in the Court, without having

No attorney &c. to withdraw from conducting a suit for non-payment of costs without leave

obtained leave, and a written order for that purpose from the Court, or one of the Judges thereof.

of Court or Judge.

See former R. 18 of 1831 & 1832

13. The taxing officer shall regulate the taxation of charges for retaining and employing Counsel, as nearly as may be, by the practice of the superior Courts in England, reference being had to any difference which may exist between the two countries in the relative value and use of money.

Counsel's fees to be regulated, as nearly as may be, by the practice in England.

See former R. 19, of 1831 & 1832, altered.

14. The taxing officer is directed not to allow any charge for dismissing witnesses during the time the cause stands in the paper for trial, during the time of the trial of the same; and the daily attendance of the attornies while their causes are on trial shall be reckoned at four attendances, and the taxing officer shall allow the same accordingly. The taxing officer also is directed not to allow any charge for the receipt of letters, rules, or copies of rules, or notices, or other papers, except in cases where it was necessary to serve the same on the attorney.

No charge for dismissing witnesses, whilst cause in paper during trial;

Attendances on trial.

Receipt of letters rules, &c.

Part of former Pl. R. 92.

15. Attendances with papers shall not be charged by the officer or attornies, according to the number of the papers with which they attend, but single attendances only shall be charged, whatever the number of the papers may be with which a person attends, at any one time, in any one case; and the registrar, sworn clerk, clerk of the papers, and prothonotary, shall not charge any more than one attendance, on any one day, whether the cause be tried, or heard on that day or not, for attending with the papers in any cause set down for hearing or trial; and no charges shall be allowed by the taxing officer for attendance in Court, in any cause standing in the paper, on those days which are appropriated to the hearing of contested motions, which at present are Mondays and Thursdays, in term time.

Attendances by officers how to be charged.

Only one attendance in one day.

None on Monday and Thursday in term.

See former Eq. R. 98, of 1829.

16. It is ordered, that no officer of this Court do charge more than one search, in each term or sitting for the papers or records he has had notice to produce at the trial of any cause set down for hearing, or on motion. It is ordered, that one search only be allowed for making office copies of papers in any one cause, unless such office copies be required from the officer granting the same

What searches are to be allowed.

on different days, the cause of such additional searches, if they should be made, to be strictly inquired into by the taxing officer. It is ordered, that all names of the witnesses required by any one party to attend at the trial of a cause be inserted in one subpœna, and that copies of such subpœna, (shewing at the same time the original to the party required to attend) be served by the attorney and not by the Sheriff as heretofore; and that where more than one subpœna is taken out, and charged for, the attorney must satisfy the taxing officer, upon oath if required, that there was good ground for taking out such subpœna.

Names of all witnesses in one subpœna.

Where more issued, officer to be satisfied, upon oath if required, of good ground for same.

Part of former Pl. R. 92.

17. Whereas, by the table hereunto annexed, the fees of the Master and of the attornies for attending upon references are much increased, it is declared, that such fees are to be charged only on attendances, which, according to the rules of the Court, are effectual for the purposes of the reference; but where any attendance is rendered ineffectual by the default of any party, the Master may charge the party in default with the same fees, which would have been charged to him if he had been present, and there had been an effectual attendance; and in order to secure regularity in this respect, the Master is required to state at the foot of every report the number of effectual attendances on the matter of the reference which have been necessary, and for which he has allowed the parties to be charged.

Master and attorney only to charge the increased fees, for effectual attendances upon references.

What if default made.

Such attendances to be stated at foot of report.

See former Eq. R. 98, of 1829

18. When the same solicitor is employed for two defendants, and separate answers shall have been filed, or other proceedings had by, or for, two or more defendants separately, the taxing officer shall consider in the taxation of such solicitors' bill of costs, whether such separate answers or other proceedings were necessary or proper, and, if he is of opinion, that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Where same solicitor employed for two defendants, and separate answer filed, or other proceedings had, officer to decide upon necessity or propriety.

New Rule.

19. That the same rule which is now applied in the taxation of costs as between attorney and client, shall be applied also in the taxation of costs as between party and party, unless in the case of costs between party and party, any of such costs shall appear to have been unnecessarily or unreasonably incurred, provided also, that such last men-

As to taxation of costs as between party and party.

tioned costs shall not be allowed as between attorney and client without proof that the attorney communicated to the client the probability that they would be disallowed between party and party, and that the client upon such communication authorized them to be incurred. (1) New Rule.

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(1) Part of this rule, as far as the word "provided," is taken from Prop. 147, Chan. Com Rep. Upon which Mr. Beames in his explanatory paper makes the following observations :—"During a long period of time, "the costs between party and party have borne no proportion to the "costs between solicitor and client, the former being regulated by a strict "rule, conceding in many cases only a very inconsiderable portion of the sums "actually expended, and leaving, therefore, to the successful party, the burthen "of a considerable portion of such expenditure, whilst the proper costs between "solicitor and client approach in most instances, to a fair remuneration for skill "and trouble, and a just reimbursement of actual disbursement. Whatever policy there may be in checking, rather than encouraging, the spirit of litigation, "it is difficult to discover the abstract justice of a rule, which, conceding to the "successful party that he ought to have his costs from his antagonist, withholds, "in point of fact, a great part of his expenditure, and compels him, possibly, to "dispose of a considerable part of that fund he has recovered, barely to answer "the expence he has been at in recovering it; in some instances, this must have "operated to deter persons from prosecuting their just rights, and, in others, it "must have been productive of compromises, by which justice has been sacrificed. To remedy these mischiefs the principle which is now applied in the "taxation of costs as between solicitor and client, should be applied in the taxation of costs as between party and party; but this rule should not be acted "upon, if any of such costs appear to have been unnecessarily or unreasonably "incurred, consistently with the corresponding rule which was framed for the "Court of Chancery in Ireland:—"that, in taxing costs between party and party "the Master shall allow the party decreed, or ordered to be entitled thereto "his costs actually incurred as between attorney and client, so far as the same "were actually necessary and proper for the attainment of justice, or defending "his rights, but not any costs incurred through over caution, negligence, or mistake, "to the end that the costs to be taxed between party and party, may, as near as "possible, equalize the costs which would be taxed between attorney and "client, if the proceedings had been conducted with strict regularity and diligence, without any unnecessary caution, and with the necessary assistance of "Counsel."

The latter part of this rule was added by the Judges, and its object would seem to be, to protect a client from having costs charged against him by his attorney, (which the taxing officer thinks the opposite party not bound to pay under the former part of the rule,) unless the attorney proves that he communicated to his client the possibility that these costs would be disallowed as between party and party, and that the client upon such communication authorized them to be incurred. These costs would generally refer to copies of pleadings, &c. and number of Counsel retained.

See also a provision somewhat analogous to the latter part of this rule at the conclusion of Rule 2. Plea rules *tit.* Plaint. p. 34. which latter rule is the same as Gen. Rule, 31, Trin. Term, 1 W. 4.

RULES AND ORDERS

TO REGULATE THE PROCEEDINGS

OF

The Court for the Relief of Insolvent Debtors

AT CALCUTTA,

MADE AND PASSED BY

THE SUPREME COURT OF JUDICATURE

AT

FORT WILLIAM IN BENGAL,

ON THE 5TH DAY OF SEPTEMBER 1837.

PURSUANT TO THE ACT 9 GEO. 4. CAP. 73.

RULES AND ORDERS,

TO REGULATE THE PROCEEDINGS OF

The Court for the Relief of Insolvent Debtors.

THE Rules and Orders, with the Table of Fees, which have hitherto subsisted in the Court for the Relief of Insolvent Debtors are revoked and annulled; and instead of them the following Rules and Orders and Table of Fees are established by the Supreme Court, at Fort William in Bengal. (*a*)

Annals former Rules and Table of Fees.

1. All summonses, precepts, rules, orders, and other mandatory process shall run, and be in the name of our Sovereign Lady the Queen, and shall be sealed with the seal of this Court, and shall have and bear the attestation of the Chief Justice of the Supreme Court of Judicature, or in the vacancy of the office of the Chief Justice, the Puisne Judge, acting as Chief Justice, naming him, and shall be prepared, made out, and signed by the Chief Clerk of the Court; and all petitions, affidavits, and other proceedings shall be filed by the said Chief Clerk of record, and the offices of the said Chief Clerk and of the Examiner shall be open every Monday and Thursday, between the hours of ten in the forenoon and four in the afternoon, and on such other days and at such hours as the Court shall hereafter direct. (*b*)

All process and orders to run in the Queen's name, to bear the seal of this Court, to have the attestation of the Chief Justice of Supreme Court and signed by chief clerk,

all petitions, &c. to be filed by chief clerk;

Offices of chief clerk and examiner when to be open (1)

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(1) See R. 5, of Bombay Insolvent Court, and see note (*b*) *infra*.

(*a*) The Table of Fees follows that of the Supreme Court.

(*b*) This rule is the same as the Bomaby rule, except the words "the Puisne Judge acting as Chief Justice, naming him."

Attorney to accept retainer of prisoner personally, prisoner to sign retainer and attorney his acceptance; when another, may receive for him. (1)

2. That in every case the attorney shall personally, and not by his clerk, accept the retainer of a prisoner, and that the prisoner shall sign the retainer, and at the same time the attorney shall sign his acceptance thereof, provided, that in case of the illness of such attorney or of his absence from Calcutta, such retainer may be received and accepted for him by some other attorney of the Court, the cause thereof being stated in such acceptance.

Attorney to have his bill taxed and deliver with allocation to Insolvent one week before hearing of his petition, When bill of costs exceeds 100 rupees, to produce affidavit in verification of the items. (2)

3. That the attorney of every prisoner, or other person, applying for relief under the Act of Parliament, shall cause his bill to be taxed by the taxing officer, and delivered with the allocatur thereon to such prisoner, or other person applying for relief, one week at least before the hearing of his or her petition, and the attorney, in all cases, on taxation of his bill of costs, when the same shall exceed the amount of one hundred rupees, shall produce and leave with the taxing officer an affidavit, proving the payment of all sums of money charged in the same as paid out of pocket, and the truth of each and every other charge for any proceeding, or attendances, or letters charged therein, and that the same were actually necessary to the prisoner's discharge. (*a*)

No attorney to employ gaoler deputy gaoler, &c. as agent to solicit retainers, &c. on pain of being removed from rolls of the Supreme Court.

4. That no attorney shall directly or indirectly employ the gaoler, deputy gaoler, prisoner, or other person, confined or residing within any of the gaols, as clerk or agent to solicit retainers, or to transact any business whatever relating to proceedings in this Court, touching the relief or discharge of any prisoner on pain of being removed from

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(1) See former R. 2, of 1829, taken from R. 1, of 1826; and R. 2, of 1833, of Court for Relief of Insolvent Debtors in England.

(2) See former R. 3, of 1829, altered, founded on R. 2, of 1826, and R. 3, of 1833, of the C. for the R. I. D. in England.

(*a*) The former rule was limitted to the attorney of "every prisoner," in the present rule the words "or other person applying for relief under the Act of Parliament" are inserted, and the rule is now applicable to insolvent persons who deliver up property to the amount of half their debts. In this rule the words "taxing officer," are inserted in place of "Examiner." It may be questionable whether it would not be better to adopt the practice of the Court in England which is not to direct any taxation unless the bill exceeds a specified amount, as the attorney may agree to complete the insolvents discharge for a less sum than would be allowed on taxation.

the rolls of the Supreme Court, and that no attorney shall practice as an attorney whilst he shall himself be a prisoner for debt or other cause.

No attorney to practice while a prisoner. (1)

5. That all petitions of prisoners shall be left one clear day, before the same shall be signed, with the Examiner of the Court for examination, who will thereupon, in every such case, prepare the conveyance and assignment of the estate and effects of the prisoner, and that all petitions shall be signed, and all coveyances and assignments executed by the prisoners, in the presence of the Examiner, who for that purpose, and for taking affidavits, will attend at the gaol in which the prisoner shall be confined, between the hours of nine and ten of the clock in the forenoon, on Tuesdays and Fridays and on no other days, and, if the fourteen days allowed by the act for presenting petitions shall expire between such days of attendance aforesaid, any prisoner may sign his petition on the next day of attendance, without a special application to the Court; And that every petition, when signed, and every assignment when executed, shall be forthwith filed by the Examiner in the office of the Chief Clerk of the Insolvent Court. (*a*)

Petitions of prisoners when to be left with Examiner, who is to prepare assignment

Petitions to be signed in his presence.

When to attend gaol for that purpose, and for taking affidavits.

What if the 14 days allowed for presenting petitions expire between such days,

Petitions, &c. when signed to be filed by Examiner in chief clerk's office.(2)

6. That in all cases when the petitioner is in gaol, there shall be filed, with the petition, a certificate from the gaoler of the day or days, and cause or causes of detainer against the prisoner; and if the prisoner shall be in custody, solely on a surrender in the discharge of his bail, there

When petitioner in gaol, certificate from gaoler of date and cause of detainer.

What if in gaol solely on sur-

(1) See former R. 4, of 1829, taken from R. 3, of 1826, and R. 4, of 1833, of the C. for the R. I. D. in England.

(2) See former R. 5, of 1829, and see R. 4, of 1826, and R. 5, of 1833, of the C. for the R. I. D. in England.

(*a*) This rule only applies to the petition of prisoners, it is not necessary that it should extend to other cases. Petitions upon a *cessio bonorum*, or by creditors for an adjudication of insolvency, must be examined by the Court before, in the one case, an assignment is directed, or, in the other, an adjudication is made. The former rule directed that all "schedules," &c. should be signed in the presence of the Examiner; the word "schedule" has been omitted in this rule, it is no part of the duty of an officer of the Court to take the schedule of the prisoner, the prisoner has, by the 31st section of the act, 30 days after presenting his petition, to file his schedule.

render in discharge of bail. (1)

shall also be filed at the same time a certificate of the plaint and state of the cause. (*a*)

Estate paper to be delivered with all petitions left with Examiner for examination, signed by petitioner and witnessed by his attorney, what to contain. (2)

7. That the better to enable the assignee to obtain, on any assignment, immediate possession of property and effects belonging to insolvents; It is ordered, that with all petitions left with the Examiner for examination, there shall be delivered an estate paper, signed by the petitioner, and witnessed by his attorney, containing the best account which can be then given of his estate and effects, especially of all such real and personal property as are in his possession, or under his controul, ready to be delivered up, or of which immediate possession can be given in his behalf; and that if there be no such property the latter circumstances shall nevertheless be so stated at that time in writing and left with the Examiner as aforesaid. (*b*)

Application to file petition after the 14 days allowed, to be supported by affidavit of prisoner, Affidavit what to contain.

8. That every application to the Court for leave to file petition after the expiration of the fourteen days allowed for that purpose shall be supported by the affidavit of the prisoner, in which shall be stated the degree, profession, or trade, and the last place of abode of such prisoner, and the time of his or her first arrest in the action, wherein he or she is then detained and the time of commitment to the prison where he or she is then confined, together with a statement of all monies paid or spent and of all property spent, sold, or made over, assigned, disposed

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(1) See former R. 6, of 1829, and see R. 5, of 1826, and R. 6, of 1833 of the C. for the R. I. D. in England.

(2) New Rule. See R. 6. of 1826, and R. 7, of 1833, of the C. for the R. I. D. in England.

(*a*) The former rule directed that the gaoler's certificate should be filed on or before the day the *schedule* was filed, but the rule is now in conformity with the rule in England, it is quite clear that this certificate should accompany the first step in the case and be annexed to the petition. The schedule may not be filed until long after the petition has been received.

(*b*) The former rule 7, which directed that, with the schedule, an inventory of excepted articles should be filed, and a statement of their value upon oath, has been omitted altogether. This act differs from the English act in this respect, -- here the insolvent has no right to retain *any* property but under the order of the Court, and when that order is applied for, the value should be ascertained; the present rule 7 is now first introduced here, founded on R. 6, of 1826, and R. 7, of 1833, of the C. for the R. I. D. in England.

of, or in any manner parted with by him or her since such first arrest, and in what manner and to whom and also the cause of not having presented such petition within the said fourteen days; And such application shall be made either by petition, with the said affidavit annexed, or by motion in Court, with the said affidavit exhibited; and there shall also be annexed, or exhibited, such account in writing of estate and effects, as is, in all cases, required by the seventh rule of the Court to be filed with the petition, which account shall be verified by the said affidavit; and on such application being granted the duplicate of the said account shall be delivered to the Officer of the Court at the time of filing the petition. (*a*)

Application how to be made.

Estate paper verified by said affidavit to be annexed,

on application granted, duplicate to be filed with petition.

9. That every application to the Court for leave to file any schedule, after the expiration of the thirty days allowed for that purpose, shall be supported by the affidavit of the prisoner, in which shall be stated, the cause of not having filed such schedule within the said thirty days; and if the prisoner shall have filed his petition without a special application to the Court, the said affidavit shall also contain such statement concerning the arrest, commitment and property of the prisoner, as is required in an affidavit made on application for leave to file petition. (*b*)

Application to file schedule, after the 30 days allowed, to be supported by affidavit accounting for delay,

If petition filed without special application, affidavit what to contain.(2)

10. If any insolvent shall require further time for filing schedule, he shall be at liberty to apply for such time as he may require, either by petition, or motion, on an affidavit, setting forth the facts, and stating that such time is required to enable him to file his schedule, and that such application

How to apply for further time to file schedule;

To be within the 30 days

(1) New Rule. See R. 7, of 1826, and R. 8 of 1833, of the C. for the R. I. D. in England;—and see note (*a*) *infra*.

(2) See former R. of 1830, and see R. 12, of 1826, and R. 13, of 1833, of the C. for the R. I. D. in England;—see also note (*b*) *infra*.

(*a*) This rule is now, for the first time, introduced here, though the practice of the Court has long been in conformity with the rules of the English Insolvent Court; R. 7 of 1826, and R. 8 of 1833; see also the words of sec. 10 of 7 G. 4, c. 57.

(*b*) This rule was passed in July 1830, and therefore is not to be found in the edition of the rules of the Insolvent Court published by Mr. Smoult.

allowed for filing same. (1)

is not made for the purpose of unnecessary delay; and all such application shall be made before the expiration of the thirty days herein before allowed for filing such schedule.

When petition and schedule filed and assignment executed or adjudication of insolvency made, Court on application of petitioner, or creditor to direct what notices shall be given.

11. That as soon as any petition, together with the schedule, required by the act, shall have been filed, and an assignment shall have been duly executed by the petitioner or petitioners, or as soon as any adjudication of insolvency shall have been made, the Court, upon the application of the petitioner or petitioners, or of the creditor or creditors, upon whose application such adjudication shall have been made, shall direct what notices shall be given and by whom and in what manner in conformity with the provisions contained in the 33d section of the aforesaid act,—provided always, that the notices, which, in the said last-mentioned section, are directed to be published in the gazette of the presidency, shall be so published by the Examiner; and provided always, that services shall be made, and proof of notice shall be given, and affidavit made, and filed, in manner following—

Notices in Gazette to be published by Examiner.

Services to be made and proof given and affidavit made, as follow. (2)

No proof required of advertisement in *Government Gazette.*

1st. No proof shall be required at the hearing of advertisement in the *Government Gazette*, which is ordered to be inserted always by the officer of the Court and by no other person.

Others proved by production of newspapers.

2nd. Proof of all other advertisements shall be made by production of the newspaper, in which the same were published.

Service of notices by affidavit.

3rd. The proof of the service of all notices, whether personal or by post, shall be by affidavit.

Personal service in Calcutta or within five miles to be made by messengers of Court, who

4th. That all personal service in Calcutta, and within five miles thereof, shall be made by messengers of the Court, who shall make affidavit of the same, the copies of orders for hearing to be served, duly addressed and

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(1) See R. 9. of Bombay Insolvent Court; and see R. 12, of 1826, and R. 13, of 1833, of the C. for the R. I. D. in England.

(2) New Rule, founded on former R. 8 of 1829. And see Rs. 17 and 18, B. Ins. Court; and R. 16, of 1826 and R. 17, of 1833. of the C. for the R. I. D. in England.

numbered according to the number in the schedule, must be delivered to them five clear days at least (exclusive of Sundays) before the last day of service in cases for original hearing and two days at least (exclusive of Sundays) before the last day of service in cases for adjourned hearing, and at the same time shall be delivered the original order for hearing, together with a list in duplicate of the persons to be served, the entries in which list will correspond with the directions written on the notices.

shall make affidavit thereof.

When and how copies of orders for hearing to be served, to be delivered to them,

5th. All services by the post, together with the address and delivery of each copy of the order, so sent, shall be verified by the affidavit of the messenger.

How services by post to be verified.

6th. In all cases to be heard by the Court, all such affidavits and advertisements, as aforesaid, shall be filed at the office of the chief clerk, five days at least before the day of hearing in original cases, and two clear days at least before the hearing in adjourned cases.

When affidavits and advertisements to be filed in cases to be heard by Court.

12. The appearanee, at the hearing, of any creditor, or other person, entitled to notice, shall be deemed a waiver by him, her, or them, of such notice, when there shall have been none, or of any defect or irregularity in the form or service thereof, unless the Court shall otherwise direct.

Appearance of creditor or party entitled to notice when a waiver of notice. (1)

13. No creditor shall be allowed, at the hearing, to oppose the discharge of a prisoner, unless he shall have given notice of his intention to the chief clerk three clear days before the day of hearing, and the chief clerk shall make an entry of such notice in a book to be kept by him for that purpose. (*a*)

Creditor not allowed to oppose discharge at hearing unless 3 days notice given to chief clerk, who is to enter same. (2)

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(1) See former R. 9 of 1829. and see R. 15, of 1826. and R. 16, of 1833, of the C. for the R. I. D. in England.

(2) Former R. 11, of 1829, altered.

(*a*) Under the former rule 11, it was also necessary that an affidavit of the debt of the opposing creditor should, at the same time, be left with the Examiner, this is unnecessary, and a useless additional expence to the parties, if the opposing party is not stated to be a creditor on the schedule, he must, at the hearing, prove himself to be so; if he be an admitted creditor, such proof is unnecessary.

When petition, schedule and books, filed therewith, may be inspected.

14. That the petition and schedule of any insolvent debtor or debtors, and the books and papers filed therewith, shall be produced by the proper officer for inspection and examination, upon payment of the ordinary and established fees for search, upon all Mondays, Wednesdays, and Fridays, between the filing of any such petition and the last day allowed for entering notice of opposition thereto, between the hours of ten and four; And notice to produce such books and papers, at the hearing of any such petitions must be given to the officer, having the custody thereof, on or before the day preceding the day of hearing.

When notice to produce at hearing to be given. (1)

Assignees within three months after assignments, and as directed, to make up accounts of estates, and make oath verifying same.

Accounts so sworn to be filed by proper officer. (2)

15. Ordered, that the assignees of every insolvent's estates, at the end of three months, at the farthest, from the time of his accepting any assignment or conveyance of the estate of such insolvent, and so from time to time, as occasion shall require, and the Court direct, shall make up an account of such insolvent's estate and make oath in writing before the Court, that such accounts contain a just and fair account of the estate of such insolvent got in by, or for such assignee, and of all payments made in respect thereof, and that all payments in every such account charged, were truly and *bona fide* made and paid; which accounts so sworn shall be filed by the proper officer of the said Court.

Acct. Genl. of Sup. Court to be Acct. Genl. of this Court. (3)

16. Ordered, that the Accountant General of the Supreme Court for the time being be, and he is hereby appointed, Accountant General of the Court for the Relief of Insolvent Debtors.

Commission of Acct.-Genl. of Court upon monies paid in, to be one per cent. (4)

17. Ordered, that upon all monies ordered to be paid into the hands of the Accountant General, with the privity of the Accountant General of the Court, the commission of the Accountant General of the Court be one per cent.

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(1) New Rule. See R. 10, B. Ins. Court, and see R. 17, of 1826, and R. 19, of 1833, of the C. for the R. I. D. in England.

(2) New Rule, founded on 7 G. 4, c. 57. § 35.

(3) New Rule.

(4) New Rule.

18. Ordered, that the Accountant General and Sub-treasurer of the Company shall charge the like per centage on all agency for the suitors of this Court, as they would charge and are accustomed to charge upon similar agency of any of the creditors of the Government.

Acct. Genl. and Sub-Treasr. to charge like per centage to suitors of this Court as to Government creditors. (1)

19. Ordered, that the assignees of the estates of all insolvent debtors shall, on the first day of January next, and on the first day of July, and first day of January, in each and every year, file an account upon oath, of each and all unclaimed dividend or dividends in their hands, and shall specify in such account the name or names of the creditor or creditors to whom such unclaimed dividend or dividends is or are due and of the amount due to each creditor; And if it shall, at any time, appear to the Court that any dividend or dividends shall have remained in the hands of any assignee or assignees for the space of six calender months next following, the declaring thereof, the Court shall order and direct such unclaimed dividend or dividends to be paid into the hands of the Accountant General and Sub-treasurer of the East India Company with the privity of the Accountant General of the said Insolvent Court, to the credit of the matter of the insolvent estate in which it shall have been declared, but with a memorandum, specifying that the monies, so credited, are specially appropriated as dividends unclaimed by and belonging to the respective creditors named in the affidavit of the assignee or assignees, by whom the same shall have been paid in.

Assignees on 1st July and 1st January to file account on oath of unclaimed dividends in their hands, specifying names of creditors and amount due.

If remaining in their hands for six months after being declared, to be paid into Court and how. (2)

20. Ordered, that such assignee or assignees shall, in all cases, when he or they shall pay money into Court pursuant to the above rule, on account of unclaimed dividends, file a schedule, verified by affidavit, made by himself or one of themselves, of the name or names of the creditor or creditors to whom such dividend or dividends is or are due, with the amount due to each respectively.

When money paid in pursuant to 19th rule, assignees to file schedule, verified by affidavit, of names of creditors to whom dividends due with amount. (3)

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(1) New Rule.

(2) New Rule, founded on statutes 6 G. 4, c. 16, § 110, 1 and 2 W. 4, 56. § 22, and 7 G. 4, c. 57, § 38.

(3) New Rule.

Rules of Sup. Court for Acct.-Genl of Court and of the Company, except where hereby varied, to be taken to be rules of this Court. (1)

21. Ordered, that the existing rules of the Supreme Court for the guidance of the Accountant General of the Supreme Court and the Accountant General and Sub-treasurer of the East India Company shall, with the exception of where they are varied or altered by the present rules, be deemed and taken *mutatis mutandis* to be the rules of the Insolvent Court.

No officer of Court nor any attorney to receive any fee not established by table of fees, or order of Sup. Court.

Where no fee provided, to be brought to notice of Court by petition. (2)

22. That no officer of the Insolvent Court, nor any attorney practising therein, shall, upon any pretence or for any reason whatsoever, demand or receive any other fee than such as shall have been established by the subsisting table of fees in that Court, or allowed by some written and subsisting order of the Supreme Court, and whenever any thing shall be required to be done by any officer or attorney, for which no fee shall have been before provided or established, such officer or attorney shall bring the same to the notice of the Supreme Court by petition, in such manner that a written rule or order may be made respecting the same.

Officers of Court and attornies to submit accounts, to taxing officer as specified in rules of the 15th June 1837, except as provided by rule No. 3. (3)

23. It is ordered that all the officers of the Insolvent Court, and all attornies practising therein, shall deliver their accounts, and submit them for taxation to the taxing officer of the Supreme Court, in the manner and form, and at the time specified in the rules for the taxing officer of the Supreme Court, passed and established by the said Court on the 15th day of June, 1837, save and except as otherwise provided for by the rule No. 3.

Attornies to charge according to table annexed.

Attornies to be responsible to officers for their

24. It is ordered, that the charges to be made by the attornies in their bills of costs shall be according to the table of charges annexed to these rules;* And every attorney shall be responsible to the officers of the Court for the relief of insolvent debtors, and to the Sheriff for the fees established by these rules, in the same manner as they

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(1) New Rule.

(2) See Rule 3, for Taxing Office.

(3) New Rule.

* The Table of Fees follows that of the Supreme Court.

are responsible to the officers of the Supreme Court, under the rules for the taxing office of that Court; and the like proceedings shall be had to enforce payment thereof, and, until such payment shall be made, the attorney shall, in each case, incur the same liabilities and disabilities in the Supreme Court; as if the fees had become due to any officer thereof.

fees as in Supreme Court (1)

25. It is ordered, that any attorney practising in the Insolvent Court, and who, under the rules for the taxing office of the Supreme Court, shall have fallen under a disability to practise in that Court, until he shall have paid his fees, shall in every such case be prohibited from practising in the Insolvent Court, in like manner as if the fees had become due to an officer thereof.

Attornies falling under a disability to practice in Supreme Court, prohibited from practising in Insolvent Court. (2)

26. That in all cases, not otherwise especially provided for, where any assignee shall make any motion or application to the Court, or shall oppose any motion or application made to the Court by any other party, if the Court shall be of opinion, that such motion, application, or opposition was vexatious or improper, the Court shall adjudge such assignee to bear his own costs of such motion, application, or opposition, without charging the estate with them, and also, if the Court shall think fit, to pay such costs to the party or parties opposing such motion or application of such assignee, or making the motion or application so opposed by such assignee, as shall appear to be just and reasonable, and as shall have been incurred by such party or parties in consequence of such motion, application, or opposition. (*a*)

Where assignee shall make, or oppose any application to Court by any other party, if the Court of opinion that same was vexatious, or improper, assignee not to charge estate with costs, and, if Court think fit, to pay costs to party opposing, or making application. (3)

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(1) New Rule.

(2) New Rule.

(3) New Rule.

(*a*) This and the three following rules contain new provisions as to costs. It is provided by Sec. 1 of 9 G. 4, c. 74. "That the Courts for the relief of Insolvent Debtors shall not have the power of awarding costs against any person, except in cases in which it is expressly permitted by this act, or in which it shall be expressly permitted by some rule, which shall be made by the Supreme Courts, respectively, for the purposes and in the manner herein after stated." The mode of making such rules is provided for in Sec 2. The Supreme Court in

Where insolvent discharged, or creditor, or person interested, makes a motion opposed by the assignee, or shall oppose any, made by assignee, such insolvent, &c. if motion or opposition frivolous or improper, shall pay to assignee, costs as shall appear just. (1)

27. That in all cases, not otherwise specially provided for, where any insolvent, who shall have received his final discharge, or any creditor, or any person interested in the estate of any insolvent, shall make any motion or application to the Court, which shall be opposed by the assignee, or shall oppose any motion or application made by the assignee, such insolvent, creditor, or other person interested, if the Court shall be of opinion, that such motion, application, or opposition was frivolous, vexatious, or improper, shall pay to the assignee, on behalf of the estate, such costs as shall appear to be just and reasonable, and as shall have been incurred by the assignee in consequence of such motion, application, or opposition.

Similar provisions where party opposing, or applying, is other than assignee. (2)

28. That in all cases, not otherwise specially provided for, where any insolvent, after obtaining his discharge, or any creditor of any insolvent, or any person interested in the estate of any insolvent, shall make any motion or application to the Court, which shall be opposed by any person other than the assignee, or shall oppose any motion or application made by such other person, such insolvent, creditor, or person interested, if the Court shall be of opinion that his motion, application, or opposition was frivolous, vexatious, or improper, shall be liable to pay to such other person, such costs as shall appear to be just and reasonable, and as shall have been incurred by such person in consequence of such motion, application, or opposition, if the Court shall so direct, but not otherwise.

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framing these rules seems not to have thought it advisable to give the Insolvent Court a general discretion as to costs, to have done so, would not have been in accordance with the provisions of the acts in England which contain no general power of giving costs, nor indeed powers so extensive as are conferred by these rules, but then, it must be recollected, that this is not only an Insolvent Court, but, to a certain extent, unites, with an insolvent law, a bankrupt law, and the *cessio bonorum* of the Scotch law. The Bombay rules for the Insolvent Court contain some provisions as to costs, see end of Bombay insolvent rule, 28.

(1) New Rule.

(2) New Rule.

29. That, in the cases provided for by the two next foregoing rules, if the party opposing any application, be a party, not specially called upon to oppose it, but coming in only under some general notice or advertisement, the Court shall be at liberty, if the oppostion fail, to order such party to pay the costs occasioned by his opposition, as in the next preceding rule mentioned, or such portion thereof as to the said Court shall seem just and reasonable, notwithstanding that the opposition shall not appear to have been frivolous, vexatious, or improper.

If party opposing application be not specially called upon to oppose, and it fail, Court, may order him to pay costs occasioned by opposition though not frivolous, or improper. (1)

(1) New Rule.

THE

TABLE OF FEES

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL.

THE TABLE OF FEES

OF

The Supreme Court of Judicature

AT

FORT WILLIAM IN BENGAL.

THE MASTER.

		Sa. Rs.	As.
15th Sept. 1803.	For every certificate, and for every report upon matters referred to him, for drawing and transcribing the same, not exceeding ten sheets, and for perusing, settling, and signing all drafts of conveyances, agreements, deeds, or other writings, by order of the Court, not exceeding ten sheets, of 90 words each sheet, calculating seven figures equal to one word, *ten rupees*, ...	10	0
	For every other sheet above ten sheets, *one rupee*, ...	1	0

On the 4th of January 1837, the Court passed the following order. "It is ordered, (the "concurrence of the Governor General in Council, pursuant to the twelfth clause of the "letters patent, of one thousand seven hundred and seventy-four, having been previously ascer-"tained and signified,) that after the first day of January, one thousand eight hundred and thirty-"seven, the fees and rewards of the officers of the Court as mentioned in the present table of "fees of the Supreme and Insolvent Courts* of Judicature, at Fort William in Bengal, and now "made payable in Sicca Rupees, and all fees hereafter established, or altered, be paid in "Company's Rupees, and that the several fees in the said tables specified be reduced accord-"ingly.

"That, from the same date, in all the offices of Court whatsoever, (except the offices of the "Sworn Clerk, Clerk of the Papers, Examiner in Equity, the Interpreters of the Court, Chief "Clerk of the Insolvent Debtors' Court, and Examiner of the Insolvent Debtors' Court,) the "folio, or sheet, for all purposes whatsoever, shall consist of 90 words, and 7 figures shall be "calculated as one word, and the charge for all writings charged per folio be reduced to 5 "annas per folio of 90 words."

RYAN, *C. J.*—GRANT AND MALKIN, *Js.*

The Judges, having arranged with Government for the payment of the officers of the Court by salaries instead of fees, were enabled to make the above order, reducing the rates for office copies in the offices specified.

* So in original.

	Sa. Rs.	As.
For copies of all accounts, depositions, interrogatories, examinations, reports, discharges, bills of costs, schedules, and other writings, when required, to be paid by the party requiring the same, not exceeding one sheet, *one rupee*, ...	1	0
For every other sheet, *ten annas*, ...	0	10
For every summons, *two rupees*,.....	2	0
For every oath administered, and for every affidavit sworn before him, and for every examination fee, and for writing every receipt for books, writings, and other papers or things delivered out by him, and for each bidding for estates before him, *one rupee*,.....	1	0
For every attendance in Court, or before a Judge at Chambers, with deeds, writings, or other papers from his office, *three rupees*,.....	3	0
For attendance on him at his office, where no other fee is due but for the summons, each side, *two rupees and eight annas*, ..	2	8
For allowing every security in appeal, *five rupees*,.....	5	0
For justifying bail in appeal, or in writs of ne exeat regno, before him, *two rupees*,	2	0
For every recognizance taken before him, *four rupees*,.....	4	0
For attending any person in Calcutta, or within ten miles thereof, at the request of any party, out of his office, to administer oaths, or for other matters, a reasonable compensation.		

On the 18th of January 1837, the following order was passed. "It is ordered (the concurrence of the Governor General in Council, pursuant to the twelfth clause of the letters patent of one thousand seven hundred and seventy-four, having been previously ascertained and signified,) that, from and after the sixteenth day of January 1837, in all the offices of this Court whatsoever, and the Insolvent Court, the folio or sheet, for all purposes whatsoever, shall consist of 90 words, and seven figures shall be calculated as one word, and the charge for all writing charged per folio shall be reduced to five annas per folio of 90 words.

"It is ordered that in the office of Examiner in Equity the practice of engrossing and the charge for it shall be abolished."

RYAN, *C. J.*—GRANT AND MALKIN, *Js.*

In consequence of the falling in of offices, subsequent to the order of the 4th of January 1837, the Court was enabled, in pursuance of the arrangement made with Government, to effect further reductions, and passed this order accordingly.

		Sa. Rs.	As.
15th June 1829.	For every attendance upon ordinary occasions when there is only one party on whom such attendance can be charged, *five rupees*,.....	5	0
	For every effectual and necessary attendance upon matters referred to the Master by the Court, and on which he has to make his report, from each side, *sixteen rupees*,	16	0
	For marking and filing every exhibit, *one rupee*,.....	1	0

THE KEEPER OF THE RECORDS AND MUNIMENTS.

15th Sept. 1803.	For copies of all records and muniments in his custody, for the first sheet of 90 words, *two rupees*, and for every other sheet, per folio, *ten annas*,.....	0	10
	For every search in his office, when no copy is taken, *five rupees*,.....	5	0
	For copies of any original paper, concerning the Ecclesiastical or Admiralty Jurisdiction, when in his custody, per folio, *ten annas*,.....	0	10
	For every attendance on the Court, or on a Judge at Chambers, with records or papers from his office, by order of the Court or a Judge, or at the request of any party, *three rupees*,.....	3	0
15th June 1829.	For each certificate required of him, *five rupees*,.....	5	0

THE ACCOUNTANT GENERAL OF THE COURT.

12th Mar. 1827. and 15th June 1829.	Upon all monies ordered by the Court to be paid into the hands of the Accountant General of the Company, with the privity of the Accountant General of the Court, and upon all interest accruing thereon, *two and a half per cent.* with the exception of all monies paid to the Accountant General of the Company by any officer of the Court as receiver of any estate or property, or guardian of the property of any infant or lunatic, on which no commission or poundage is to be charged by the Accountant General of the Court.		
12th Mar. 1827.	For entering and countersigning any order for the payment of money, *five rupees*, ..	5	0

		Sa. Rs.	As.
	For making and entering every certificate to be annexed to such order, *ten rupees,*	10	0
	For entering every certificate of the Accountant General or Sub-Treasurer of the Company, *five rupees,*	5	0
	For giving any copy of any such order or certificate, *five rupees*	5	0
	For giving a copy of any account, per folio, *one rupee,*	1	0
	For every searching of the books, *five rupees,*	5	0
15th June 1829.	For receiving instructions for making a certificate in any suit of the funds in the hands of the Accountant General, and for making the same, *five rupees,*	5	0
3d Term 1828.	N. B. None of the abovementioned fees, nor any fee whatever, is to be demanded or received by the Accountant General of the Court in respect of any payments directed to be made to suitors of the Court at certain and successive periods, whether out of any funds in Court or out of any monies in the hands of any receiver appointed by the Court.		

THE TAXING OFFICER.

7th Feb. 1831.	For every summons, *two rupees,*	2	0
	For every certificate, *one rupee,*	1	0
	For every oath administered, and affidavit sworn before him, *one rupee,*	1	0
	For an attendance upon the taxation of every attorney's bill of costs, *five rupees,*	5	0
	For every hour actually employed in the taxation of every attorney's bill of costs, *sixteen rupees,*	16	0
	For any time less than an hour, at the same rate, if the bill amounts to two hundred rupees.		

THE CLERK OF THE CROWN.

15th Sept. 1803.	For swearing every Chief Justice, *eleven rupees,*	11	0
	For swearing every Judge, *eight rupees,*	8	0
	For every writ of mandamus, certiorari, habeas corpus, procedendo, error and attachment, for every venire on a traverse, and for taking every recognizance, and for discharging or respiting the same,		

	Sa. Rs.	As.
and for precepts for the grand and petty jurors, for each, *three rupees*,.....	3	0
For every bail, and for every justification of bail taken in criminal matters, for recording the appearance of every defendant, and every plea of not guilty, and for joining issue thereon except in felony, and for every short order of the Court, and copy thereof, for each, *two rupees*, ..	2	0
For every special order of the Court not exceeding 4 folios of 72 words, and for every copy thereof, *three rupees*, ...	3	0
For every special order exceeding 4 folios, and for every copy, per folio of 72 words, *one rupee*,.....	1	0
For drawing every bill of indictment or special plea, replication, rejoinder, or verdict, in felony, not exceeding 4 folios of 72 words, *three rupees*,.	3	0
For engrossing, and for parchment, each, *three rupees*,.....	3	0
For drawing every bill of indictment or special plea, replication, rejoinder, or verdict, in felony, exceeding 4 folios of 72 words, and for engrossing the same, each per folio, *one rupee*,.....	1	0
For copies of indictments, pleas, verdicts, affidavits, or other papers, per folio of 72 words, *ten annas*,.....	0	10
For copies of indictments, or other papers, attested by the clerk of the crown, when granted by the Court to be made use of, in civil cases, per folio of 72 words, *one rupee*,.....	1	0
For making up the record when directed by the Court, and for office copies of all proceedings in criminal cases appealed, for the first folio of 72 words, *three rupees*,	3	0
For every other folio of 72 words, *one rupee*,	1	0
For filing and docketting every petition of appeal, *two rupees*,.....	2	0
For entering in the minute book the allowance of petition of appeal, except in felony, *twelve rupees*, ...	12	0
For ditto in felony, *one rupee*, ...	1	0
For entering and filing each security given in appeal, except in felony, *six rupees*,	6	0
For every justification of such bail in open Court, *three rupees*,.....	3	0

	Sa.	Rs.	As.
For every subpœna to give evidence, except in felony, *two rupees*,.....		2	0
For every witness sworn in Court, search in his office, and for carrying indictments to the grand jury, except in cases of felony, for each, *one rupee*,.....		1	0
For relinquishing a plea pleaded, and entering a confession other than in felony, and for discharging an indictment or a presentment of the grand jury, for each, *four rupees*,.....		4	0
For every attendance in Court with papers deposited in his office, or on a Judge at Chambers, upon notice, order, or subpœna, and for every other attendance on the necessary business of the suitors, or in any matter officially conducted by him except in his office during office hours, for each, *three rupees*,.....		3	0
For drawing every bill of indictment for a misdemeanor, not exceeding 4 folios of 72 words, *three rupees*, ...		3	0
For engrossing the same, and for parchment, each, *three rupees*, ...		3	0
For drawing every bill of indictment for a misdemeanor, exceeding 4 folios, and for engrossing the same, each, per folio of 72 words, *one rupee*,.....		1	0
For parchment, whenever used, per skin, *three rupees*,.....		3	0
For passing every indictment prepared by the party, or his attorney, the same fees, (except for parchment as if drawn, &c. by the clerk of the crown.			
For every certificate, not exceeding 2 folios of 72 words, *one rupee*,.....		1	0
For ditto, exceeding 2 folios, per folio, *ten annas*,.....		0	10
For filing every plea, replication, rejoinder, (except in felony, and to an information) return of writ, order, certificate, affidavit, deposition, examination, recognizance, or other paper not expressly allowed for by this table, for each, *one rupee*,.....		1	0
For joining every issue, entering traverse of each defendant, calling prosecutor, defendant, bail, or witness on recognizance, for reading record, and record-			

	Sa. Rs.	As.
ing every general verdict, for each, in cases of misdemeanor, *two rupees*, ...	2	0
For entering every confession, acquittal, or discharge in misdemeanor, *four rupees*,	4	0
For drawing record upon every traverse, for the first folio of 72 words, *two rupees*,	2	0
For drawing every other folio of 72 words, and for engrossing the same, each, *one rupee*,.....	1	0
For reading every exhibit, or written evidence, affidavit, certificate, or other paper, produced at a trial or on any motion in Court, *eight annas*,.....	0	8
For quashing an indictment, or discharging the same upon submission or stay of process, *six rupees*, ...	6	0
For filing every ignoramus bill in misdemeanor, for every gaol prisoner discharged by proclamation, for filing every demurrer, joining therein. setting it down for argument, and entering judgment thereon, for each, *two rupees*,.....	2	0
For signing every information, *eight rupees*,	8	0
For filing information, subpœna to answer, entering appearance, and rule to plead, for each, *three rupees*, ...	3	0
For record and all other proceedings on informations, the same rates and fees as in case of misdemeanor.		
For every license to compound, *six rupees*,	6	0
For filing interrogatories in contempt, and for filing answers thereto, each, *ten rupees*,.....	10	0
For appointment to answer interrogatories, *three rupees*,.....	3	0
For taking answers and for engrossing them, each, per folio of 72 words, *one rupee*,.....	1	0
For attendance thereon, per hour, *three rupees*,.....	3	0
For report on answers, and for entering judgment thereon, each, *eight rupees*,.....	8	0
For filing return of certiorari, or habeas corpus, to remove an indictment or order of quarter sessions, or order of the Justices of the Peace, *six rupees*, ...	6	0
For setting down such order for argument, and for affirmance or quashing thereof, for each, *three rupees*,.....	3	0

		Sa. Rs.	As.
	For all other proceedings on writs of certiorari, or habeas corpus, the same rates and fees as in cases of misdemeanor.		
	For filing every warrant from the Governor General in Council, for a commission of the peace, and for filing every commission of the peace, each, *five rupees*, ...	5	0
	For drawing and for engrossing said commission, each, per folio of 72 words, *one rupee*, ...	1	0
	For swearing every Justice of the Peace, *eight rupees*,.....	8	0
4th Term 1828.	For striking a special jury, viz.		
	Filing office copy of plea, *one rupee*, ...	1	0
	Filing certificate of issue joined, *one rupee*,	1	0
	Minuting motion that a special jury be struck before the clerk of the crown, &c. *one rupee*,.....	1	0
	Order, *three rupees*,.....	3	0
	Drawing and engrossing appointment of the clerk of the crown to proceed to draw special jury, *two rupees and eight annas*,	2	8
	Attending sheriff and the respective attornies of the parties to drawn the special jury. *twelve rupees*, ...	12	0
	Copy list of 48 jurors for the attorney for the prosecution, *one rupee and four annas*,	1	4
	Copy thereof for the defendant's attorney, *one rupee and four annas*, ...	1	4
	Drawing and engrossing appointment of the clerk of the crown will proceed to strike the special jury, *two rupees and eight annas*, ...	2	8
	Attending the respective attornies of the parties striking the special jury,*twelve rupees*,	12	0
	Copy list of 24 jurors for the attorney for the prosecution, *ten annas*,.....	0	10
	Ditto for defendant's attorney, *ten annas*,	0	10
15th June 1829.	For drawing the abstracts of records, for every folio of the record of 72 words, *four annas*, ...	0	4

THE REGISTRAR IN THE COURT OF EQUITY.

15th Sept. 1803.	Upon swearing in every Chief Justice, *eleven rupees*,.....	11	0
	Upon swearing in every Judge, *eight rupees*,	8	0
	Upon swearing in every officer on the equity side of the Court, *five rupees*,.....	5	0

	Sa. Rs.	As.
For drawing all orders, not exceeding one sheet of 90 words, *one rupee*, ...	1	0
For every other sheet, *ten annas*, ...	0	10
For engrossing, per sheet, *ten annas*, ...	0	10
For minuting every motion granted or not, *eight annas*, ...	0	8
For every petition filed, for entering every cause, for every subpœna to appear and answer, and for entering all commissions to take answers, to examine witnesses ex parte, and for every search in his office, *one rupee*, ...	1	0
For every common dedimus potestatem to take an oath, or answer, *three rupees*, ..	3	0
For every special dedimus by order of Court, *five rupees*, ...	5	0
For every common injunction, for every writ of ne exeat regno, *six rupees*, ...	6	0
For every special injunction, *seven rupees*,	7	0
For every commission to examine witnesses with the oaths, and for every special commission, *five rupees*, ...	5	0
For making out, preparing, and signing every writ of assistance, or other writ of execution upon an order or decree, not exceeding two sheets, *three rupees*, ..	3	0
For every other sheet, *ten annas*, ...	0	10
For making out, preparing, and signing every commission of rebellion, sequestration, or other process of contempt, and for every decree pronounced, for every commitment, for every dismission, and for filing and entering every petition of appeal, and for every security on appeal, *three rupees*, ..	3	0
For every attendance in Court, or on a Judge at Chambers, with a petition or other paper from his office, and for every attendance on parties or their attornies, inspecting books or papers deposited in his office, by order of the Court, *three rupees*, ...	3	0
For the appearance of every defendant, who appears separately by himself, *one rupee and twelve annas*, ...	1	12
If two or three defendants appear by the same attorney, the fee for appearing, *two rupees*, ...	2	0
But if more than three, and not exceeding six defendants together, *three rupees*, ...	3	0

		Sa. Rs.	As.
	For more than six, *five rupees*, ...	5	0
	For every petition for rehearing, or bill of review, and for entering all pleas, demurrers, or exceptions, to be argued in Court, each side, *one rupee*, ...	1	0
	For the order of the Court thereon, *three rupees*,, ...	3	0
	For entry of all orders, per sheet, *eight annas*, ...	0	8
	For drawing up every decree, for the first sheet of 90 words, *twelve annas*,.....	0	12
	For every other sheet, *eight annas*, ...	0	8
	For engrossing the same, per folio, *six annas*.....	0	6
	For every appointment, or admission of a guardian, *six rupees and eight annas*, ..	6	8
	For entering every decree, per folio, *ten annas*, ...	0	10
	For every subpœna, except subpœna to appear and answer, *two rupees*, ...	2	0
	For administering every oath or affidavit, taken in Court, *one rupee*,.....	1	0
	For filing every affidavit, or other paper to be made use of in Court, *one rupee*, ...	1	0
	For entering in the minute book the allowance of every petition of appeal, *six rupees*, ...	6	0
	For every capias, or commitment by the Court, in its equitable jurisdiction, *one rupee*, ...		0
	For the enrolment of every decree, *four rupees*, ...	4	0
	For poundage upon all deposits made with him, unless otherwise ordered by the Court, for any sum under 20 rupees, *one rupee*, ...	1	0
	For sums of 20 rupees and more, five per cent.		
	For every instrument, writing, matter or thing, drawn and registered, or drawn or engrossed by the registrar, not herein specified, per folio, *ten annas*, ...	0	10
9th Jan. 1817.	For all office copies made in his office, per folio of 90 words, *ten annas*, ...	0	10

THE REGISTRAR IN THE ECCLESIASTICAL COURT.

15th Sept. 1803. For every probate or administration, where the estate exceeds 400 current rupees,

	Sa. Rs.	As.
every exemplification of any probate or administration, (be the estate more or less), for every administration, bond and recorded copy thereof taken together, where estate exceeds 400 current rupees and for every administration pendente life, *eight rupees*, ...	8	0
For every probate or administration, where estate does not exceed 400 current rupees, every bond and recorded copy thereof together in the like case, and every duplicate of a probate, be the estate more or less, *two rupees eight annas*, ...	2	8
For drawing, registering, and engrossing every limited or special administration or probate (besides the before mentioned fees,) per sheet, *one rupee*, ...	1	0
For every commission to swear executors, or to swear an administrator and take his bond, every letter missive deemed necessary by the Court, and every attested copy of the appointment of a guardian, *four rupees*, ...	4	0
For every commission for any other purpose, every bond in a cause of legacy, every significavit pro corporis captione vel deliberatione, *six rupees and eight annas*,	6	8
For registering every will, where estate exceeds fifty current rupees, if not more than five sheets, (each sheet to contain 90 words,) *two rupees*; and for every sheet above five in such cases, *six annas*, ...	0	6
For filing every inventory, where estate exceeds 400 current rupees, registering every act of renunciation and curation, drawing every necessary receipt to be signed either by proctor or party, when a copy is deposited loco originalis, and signing every decree, monition, excommunication, or absolution, and for every compulsory process against witness, *one rupee*, ...	1	0
For registering every libel, set of articles, or personal answer, of any party principal, and for copy of every libel, set of articles or personal answer, if not more than four sheets, *two rupees*; for every other sheet above four, *six annas*,..... ..	0	6
For registering every act of Court ex-		

	Sa. Rs.	As.
pedited extra-judicially before a Judge, and every act on warning a caveat, and searching after any will, administration or original exhibit, where no copy thereof is bespoke, *eight annas*,....	0	8
For registering every act sped in Court, whether long or short, *four annas*, ...	0	4
For filing every proxy, or other paper, on the ecclesiastical side of this Court, *one rupee*,	1	0
For drawing and registering every sentence of divorce, and every other definitive sentence in a matrimonial cause, *two gold mohurs or thirty-two rupees*, ..	32	0
For drawing and registering every other final sentence, or decree, and every such interlocutory decree as hath the effect of a definitive sentence, *sixteen rupees*, ...	16	0
For drawing and registering every other interlocutory decree, and every writtten sentence not definitive, if not more than five sheets, *five rupees*; and for each sheet above five, *one rupee*,....	1	0
For every copy of an original exhibit, when the original is decreed to be delivered out of Court, and the copy to be deposited loco originalis, and every copy of a will or clause of a will, inventory, or clause of an inventory, whether annexed to a probate, or to letters of administration, or taken at any subsequent time, either from the registrar book or from the original, whilst the same is in the register's custody, per folio, *ten annas*,.....	0	10
For collating every exhibit, and every copy of a will or codicil collated, *three rupees*,.	3	0
For examining every witness on every set of interrogatories administered to the adverse party, attending with an original will to have an executor sworn before a Judge, and for every other attendance before a Judge or on the Court, with exhibits, *two rupees and eight annas*, ...	2	8
For delivering out on bond an original will including an attendance, and the drawing and engrossing of the affidavit and copy of the bond, *sixteen rupees*.....	16	0
For poundage on all money brought into, and left in the registry, the party to pay		

		Sa. Rs.	As.
	the shroff or banian, and to the register, *one per cent.*		
	For every writ, instrument, writing, matter, or thing, drawn and issued, or drawn and registered, drawn and engrossed by the registrar, and not herein before specified, per folio, *ten annas*,.....	0	10
	For every writ, certificate, instrument, matter, or thing, registered only and not drawn by the registrar, not herein before mentioned, per folio, *six annas*,.....	0	6
	For every copy of a monition, absolution, significavit, or any other decree, of any allegation, set of interrogatories, deposition of a witness, set of articles de solvendo pro rato, bond to perform such articles, sentence, interlocutory decree, order of distribution, or other order, act of Court, of any act entered, on administration, or probate passing the seal, of any exhibit, or instrument, matter, or thing, not herein before specified, if such copy does not exceed four sheets, *two rupees;* and for every other sheet above four, *six annas*,.....	0	6
	For every licence to marry without publication of banns, *ten rupees*, ...	10	0
15th June 1829.	In cases in which the registrar is permitted by the rules of the Court to act as a proctor, the same fees are to be taken as by a proctor.		

THE REGISTRAR IN THE COURT OF ADMIRALTY.

15th Sept. 1803.	For every warrant, (action included,) for subducting an action, for every decree for answers, for every monition or decree to see further proceedings, and for registering every first decree of contumacy, in a cause where the defendant cannot be arrested, *three rupees*, ...	3	0
	For entering action, when no warrant is extracted, for every bail, for every bail-bond annexed to a commission to take bail, every copy of an act of Court, and every claim, *two rupees*,.....	2	0
	For every bail and release together, every supersedeas, every commission to take bail, every commission of unlivery, every		

	Sa. Rs.	As.
commission of delivery, every restitution, every attachment, every decree or commission of appointment, every decree or commission of sale, every copy of a sentence, or interlocutary decree, every monition pro sorte principale et expensis, and every monition viis modis, *five rupees*, ...	5	0
Every commission of appraisement and sale in one instrument, and every exemplification of a sentence, or interlocutory decree, *ten rupees*,.....	10	0
For every requisition for examination of witnesses, every commission for the same purpose, every commission for answers, and every copy of a confirmation of sale, *seven rupees*, ...	7	0
For every default, *one rupee*, ...	1	0
For every compulsory against witnesses, for drawing and registering every sentence or decree, whether final or interlocutory, not herein before mentioned, for every attendance with record at any Court or in any cause not maritime, for every extra-judicial attendance, and for every act of guardianship, the registrar shall receive such fee as the ecclesistical registrar is entitled to receive in a similar case. Also for all copies of what kind soever, and for every writ, instrument, writing, matter, or thing, not being before specified, whether drawn and issued, or drawn and registered, or drawn and engrossed, by the registrar, or whether registered only, and not drawn by him, he shall be paid such sum or sums of money as the ecclesiastical registrar is entitled to receive in the like case, and for the like trouble ; and for drawing and engrossing indictments, &c. and for all other criminal proceedings in the Court of Admiralty, the same fees and rewards as are allowed in like cases to the clerk of the crown in the Supreme Court.		

THE PROTHONOTARY.

5th Sept. 1803.	For every sequestration against privileged persons, *ten rupees*,.....	10	0

	Sa. Rs.	As.
For swearing every officer or advocate, *five rupees*, ...	5	0
For swearing in an attorney, *four rupees*, ..	4	0
For every commission to take an affidavit, or to examine witnesses upon interrogatories de bene esse, *five rupees*, ...	5	0
For every letter missive, per folio, *ten annas*, ... ----	0	10
For copy of ditto and of the oaths annexed to a commission to examine witnesses de bene esse, per folio, *ten annas*, ...	0	10
For every common writ of sequestration, execution on the effects, writ to sell goods sequestered, writ of possession, prohibition, surcease, and scire facias to revive a judgment, and for every capias for contempt, and every capias ad satisfaciendum; for each of the above, *four rupees*, ...	4	0
For every capias in the first instance, and writ of error, each, *three rupees*, ...	3	0
For every capias after summons, scire facias against bail, and for filing of record, docketting, and signing every plaint, where the first process is capias, for each, *two rupees and eight annas*, ...	2	8

For every writ of summons, and for filing of record, docketting, and signing every plaint, where the first process is summons, and for filing the return to every writ, and for filing and docketting every petition filed in his office, (except petitions of appeal and surcease,) and for entering in the minute book every justification of bail in open Court, every discharge of recognizance of bail, non pros., non suit, caveat, committitur, and supersedeas, entering every common rule, and for taking minutes of the opinion of the Court, and for every cause struck out of the papers, (to be paid by the party by whose default the same is struck,) for taking or filing every affidavit, and for entering on the minutes every proclamation, for attending with petition of tenant in possession on trials in ejectment, and for entering in the minute book every surrender in discharge of bail in Court, and for every subpœna to give evidence, and

	Sa. Rs.	As.
for each witness sworn in Court, and for every search in his office, and for every certificate given under his hand were no search has been allowed, for each, *one rupee*, ...	1	0
For every habeas corpus on the plea side, and every commitment in execution, and for calling every cause, *two rupees*, ...	2	0
For making up the record (except where judgment has been confessed under a warrant of attorney before process issued,) for the first sheet of 72 words, *two rupees*, ...	2	0
For every other sheet of 72 words, *one rupee*,	1	0
For parchment for record, per skin, *three rupees*, ...	3	0
For all copies to be certified to England, and for copies of all special rules, affidavits, judgments, and proceedings, per folio of 72 words, *ten annas*,....	0	10
For filing and docketting every petition of appeal, or surcease, and for filing and docketting every plaint in ejectment, and every plaint in replivin including the indorsement, for every reference on making up a judgment, and for taking and filing special bail, *two rupees*, ...	2	0
For entering in the minute book every rule, (except rule to plead) and for every copy of ditto, each, per folio of 72 words, *ten annas*,.....	0	10
For entering and filing each security on appeal, *five rupees*, ...	5	0
For every justification of security in appeal in open Court, *two rupees*;	2	0
For entering in the minute book the allowance of petition of appeal, *ten rupees*, ..	10	0
For filing every warrant to defend, warrant on change of attorney, warrant to confess judgment after process issued, warrant to acknowledge satisfaction, Judges' order (other than for process on commencement of action) allocatur (except of costs on a judgment by confession before process issued.) exhibit, certificate, or other paper produced on motion in Court, or filed in his office, in order to ground motions of course, or judgment of non pros, for each, and for filing deposition, *one rupee*, ...	1	0

		Sa. Rs.	As.
	For filing every satisfaction piece, *two rupees*, ...	2	0
	For every attendance on a Judge at Chambers, on the Court, or the grand jury in the sessions of oyer and terminer, with papers from his office, under notice, order, or subpœna, and for every other attendance on the necessary business of the suitors, (except in his office during office hours) for each, *three rupees*, ...	3	0
15th June 1829.	For abstracting the record for the Court at the trial of a cause, for every folio of the record of 72 words, *four annas*, ...	0	4

MEMORANDUM.

The fees for entering up judgment by warrant of attorney, before process issued, remain as by the reduced table of fees, referred to by the 92d rule of Court on the plea side, and as they are set forth in a schedule annexed to this table, but with the following additions for filing and entering under the statute of the 9th Geo. IV. cap. 73, viz.

	To the Prothonotary for filing and entering in his book every warrant of attorney, *two rupees*, ...	2	0
	For every certificate of filing and entering the same, *one rupee*, ...	1	0

THE SWORN CLERK.

15th Sept. 1803.	For filing every bill, information, answer, plea or other pleading, *two rupees*, ...	2	0
	For every attendance in Court on motion, or at the trial or hearing of any cause, and for every attendance on a Judge at Chambers, on the Master, the Registrar, or the Examiner, on the necessary business of the suitor, *three rupees*, ...	3	0
	For term fee, *two rupees*, ...	2	0
	For office copies of all bills, answers, exceptions, or other proceedings out of his office, for every sheet of 90 words, *ten annas*, ...	0	10
	For every attendance to amend bill, when the amendments do not exceed two folios in any one place, *three rupees*, ...	3	0

		Sa. Rs.	As.
	For every search in his office, *one rupee*, ..	1	0
15th June 1829. 7th Feb. 1831.	For a certificate of the whole state of any cause, if required, *ten rupees*, ...	10	0
	For filing any rule, order, or notice, *one rupee*, ...	1	0
	For each certificate of any single matter, *one rupee*,.....	1	0

THE CLERK OF THE PAPERS, DEPOSITIONS AND READING CLERK.

15th Sept. 1803.	For reading and marking every exhibit, and for each separate part of an answer or other proceeding in equity read and marked by him, *eight annas*, ...	0	8
	For reading and marking every charter, deed, record, or act of Parliament, read in Court, *one rupee*, ...	1	0
	For reducing into writing the depositions of witnesses, per folio of 72 words, *ten annas*, ...	0	10
	For engrossing ditto, to be signed by the witness, *eight annas*,.....	0	8
	For copies of ditto, and of exhibits, per folio, *ten annas*, ...	0	10
	For copies of depositions and exhibits not exceeding one folio, *one rupee*, ...	1	0
	For filing depositions taken *de bene esse* before a Judge, per folio, *six annas*, ...	0	6
	For filing and docketting every plea of the general issue, *comperuit ad diem, son assault, plene administravit, ne unques executor, nul tiel record, per minas, per dures, infra ætatem, solvit ad diem,* and for every issue joined, *one rupee*,.....	1	0
	For keeping money paid to him on tender, or leave to bring money into Court, for every sum exceeding one hundred current rupees, one per cent.; for any sum under one hundred current rupees, *one rupee*, ...	1	0
	For every search in his office, except where certificate taken, *one rupee*, ...	1	0
	For every certificate by him granted, and for certifying each part of a bill, or answer, read at the hearing, for the purpose of appeal, *one rupee*,.....	1	0
	For filing and docketting every order of Court, or other paper filed in his office,		

		Sa. Rs.	As.
	and not herein specified, for attending the Prothonotary with every plea or other pleading, upon which issue has been joined, or for the purpose of entering up *non pros*, for endorsing the receipt on the back of the plea, or order for every sum of money paid in to court, *one rupee*,....	1	0
	For every attendance on the Court, or on a Judge at Chambers, with exhibits or other papers, *three rupees*.....	3	0
7th Feb. 1831.	For drawing and entering every rule, for filing and docketting every special plea or other pleadings in the cause, by plaintiff or defendant, and for every imparlance and oyer, and for setting down each cause for trial or special argument, *two rupees*, ...	2	0

THE EXAMINER.

15th Sept. 1803.	For receiving every subpœna, *three rupees*,	3	0
	For writing every note to the opposite party, *three rupees*, ...	3	0
	For attending the swearing of each witness, *three rupees*,.....	3	0
	For drawing the depositions of such witnesses, under four folios of 90 words, *three rupees*,.....	3	0
	For engrossing the depositions under four folios, *three rupees*,.....	3	0
	For drawing depositions, if above four folios, per folio, *ten annas*,.....	0	10
	For engrossing same, per folio, *eight annas*,	0	8
	For all manner of certificates, whereunto his hand is required, *three rupees*.....	3	0
	For the examination of every copy or book of depositions which is to be given in evidence in Court with the original, *three rupees*,.....	3	0
	For office copies of depositions, and all other papers, per folio of 90 words, *ten annas*, ...	0	10
	For attending the examination of every deponent, unto whom the Examiner is required to travel in Calcutta, or within ten miles thereof, a reasonable compensation to be allowed, at the discretion of the Master.		

THE SEALER.

		Sa.	Rs.	As.
15th Sept. 1803. 15th June 1829. 7th Feb. 1831.	For affixing the seal in each case in which it is required, *one rupee*, ...		1	0
	Except in cases of felony, and except letters of administration, or probate of the will of a soldier or seaman, dying in the service of the King, or the India Company, where the estate does not exceed 200 rupees, in which cases no fee is to be charged.			
	For affixing the seal to proceedings to be sent to England, or beyond the limits of the presidency of Fort William, *ten rupees*,		10	0

THE JUDGE'S CLERKS.

15th Sept. 1803.	For every summons, for every bail piece, for every new bail added, for every justification at Chambers, for each person entering into any recognizance, for drawing every recognizance, for every petition presented to the Judges, for making out every cause paper at the trial or hearing of every cause, entering exceptions to any surety on appeal, drawing and writing every warrant, or order made at Chambers, for every affidavit sworn or oath administered, for carrying every affidavit, bail piece, or other paper, to be filed, for every certificate, entering exceptions to bail, and acceptance of bail, and for every surrender in discharge of a bail, for receiving and delivering to the Judge every paper book in demurrer, or otherwise, every prayer of a bill in equity, or copy of the Master's report, and for each time the Clerk attends on the business herein above specified, or on the necessary business of the suitor, at Chambers, in Court, or at any of the offices of the Court, *one rupee*,.....		1	0
	For reducing into writing, depositions *de bene esse*, or otherwise, at Chambers, per folio of 72 words, *ten annas*, ...		0	10
	For engrossing ditto to be signed by the witness, *eight annas*,.....		0	8
	For every copy of ditto, or of interrogato-			

		Sa. Rs.	As.
	ries, or of exhibits produced, per folio, *eight annas*, ...	0	8
	For taking security on appeal, each security, *three rupees*,.....	3	0
	For every such security justified at Chambers, *three rupees*,.....	3	0
7th Jan. 1815.	For each exhibit annexed to any affidavits sworn before any of the Judges, *eight annas*,.....	0	8
15th June 1829.	For examining the matter of which any Judge's certificate is required, and obtaining the signature of the Judge, *ten rupees*,.....	10	0
7th Feb. 1831.	The following alterations were made as to the fees of two of the Clerks, and the same are to take place as to the third Clerk on the first vacancy of the appointment, viz.		
	The fee for carrying bail pieces, affidavits, or other papers to be filed, is abolished.		
	The fee of one rupee for attendance is abolished, except when the attendance is to procure the signature of a Judge.		
	The fee of eight annas upon exhibits marked by any Judge in Chambers is reduced to *two annas*,.....	0	2

THE SHERIFF.

15th Sept. 1803.	For executing every *capias, capias ad satisfaciendum, fieri facias, sequestration, venditioni exponas, habere facias,* attachment, proclamation in equity, commission of rebellion, capias of contempt against one defendant, *two rupees*,	2	0		
	Return, *one rupee*, ...	1	0		
	Translate, (if native,) *eight annas*, .	0	8		
	Search, *one rupee*, ...	1	0		
				4	8
	For serving every summons, *scire facias*, and writ of covenant against one defendant, *one rupee*, ...	1	0		
	Return, *one rupee*, ...	1	0		
	Translate, (if native,) *eight annas*, .	0	8		
	Search, *one rupee*, ...	1	0		
				3	8
	For every certificate, *one rupee*, ...			1	0
	For every assignment of bail bond, *one rupee*, ...			1	0

	Sa. Rs.	As.
For every warrant to discharge defendant out of custody, *one rupee*, ...	1	0
For drawing a bail bond, *two rupees*, ...	2	0
For delivering back bail bond by order of the plaintiff's attorney, *eight annas*, ...	0	8
For every special return, *two rupees*, ...	2	0
For receiving every plaint in replevin, *one rupee*, ...	1	0
For executing every *habeas corpus*, *two rupees*, ...	2	0
For executing every process from the Courts of Equity, Ecclesiastical and Admiralty, against one defendant, *two rupees*, 2 0		
Return, *one rupee*, ... 1 0		
	3	0
For poundage upon the sum levied under a writ of execution against the effects, or for taking the defendant in execution, for the first 1000 rs. at 5 per cent. and for the rest at 2½ per cent.		
For poundage upon a writ of possession, at eight annas upon every ten rupees of the yearly value.		
For bringing up every defendant from gaol, *two rupees*, ...	2	0
For every search in his office, *one rupee*, ..	1	0
For making every replevin, *ten rupees*. ..	10	0
For every security taken of the plaintiff in replevin, *three rupees*, ...	3	0
For every bill of sale from the Sheriff, *eight rupees*, ...	8	0
For serving every notice under sequestration or execution to seize property, if no other property seized than what is mentioned in the notice, *nine rupees*, ...	9	0
For ditto ditto, if more property seized than what is mentioned in the notice, *eleven rupees*, ...	11	0
For serving notice of a second or subsequent seizure, *two rupees*, ...	2	0
No notice shall be charged for, which is not served.		
For copy of notice of claim to the Sheriff when required per folio, *one rupee*, ...	1	0
For copies of all other papers taken from his office, per folio of 72 words, *eight annas*, ...	0	8

THE CRYER, KEEPER OF THE COURT, APPARITOR, AND MARSHAL OF THE ADMIRALTY COURT.

		Sa. Rs.	As.
15th Sept. 1803.	For every cause entered, indictment found, except in felony, calling every cause, or indictment, for trial or special argument, except indictment for felony, calling each bail to justify, for every oath administered in Court, except in cases of felony, calling every plaintiff, on nonsuit, for every judgment or decree from the party for whom the judgment or decree passes, for every guardian admitted, calling each bail on appeal, for calling every prosecutor, defendant, witness or bail, on recognizance in cases of misdemeanor, for making every proclamation in civil causes, and in prosecutions for misdemeanors, and for every defendant discharged on being acquitted, or for want of prosecution, *one rupee*, ...	1	0
	For swearing a Chief Justice, *six rupees*,..	6	0
	For ditto every other Judge, *four rupees*,..	4	0
	For ditto every officer and advocate, *three rupees*,.....	3	0
	For ditto every attorney and proctor, *two rupees*,.....	2	0
	For delivering an excommunication in Calcutta, *two rupees*, ...	2	0
	For every sentence, or interlocutory decree, for warning every caveat, and for reporting the sufficiency of sureties, *one rupee*.	1	0
	For every attendance to confess judgment in ejectment, *two rupees*,....	2	0

THE ATTORNIES.

For every necessary attendance within Calcutta, except at the offices of the Court, *two rupees and eight annas*, ...

For every attendance at any office of the Court, *one rupee*,.....

For every attendance before any Justice of this Court, or before the Master, except on reference, *two rupees and eight annas*,

For every attendance before any Justice of this Court on examination on interrogatories *de bene esse*, arguing, exceptions, return of *habeas corpus*, or other spe-

	Sa.	Rs.	As.
cial matter, and for every attendance on arbitrators, *five rupees*, ...		5	0
For every letter of demand at the commencement of a suit, *three rupees*, ...		3	0
For every other letter, *two rupees*, ...		2	0
For term fee, *three rupees*, ...		3	0
For warrant of attorney to sue or defend, *two rupees*, ...		2	0
For drawing every plaint, plea, replication, or other pleading, suggestion, petition, notice, affidavit, interrogatory, or other matter or thing, at the common law side of this Court, for the first sheet of 72 words, *two rupees*, ...		2	0
For every other sheet of 72 words, *eight annas*,		0	8
For engrossing of ditto, per folio of 72 words, *eight annas*, ...		0	8
For every copy thereof, when necessary, per folio, *eight annas*, ...		0	8
For drawing briefs for advocates in common law causes, (each sheet to contain six folios of 72 words,) per sheet, *four rupess*,		4	0
For every copy, per sheet, *two rupees*, ...		2	0
For drawing bills, answers, and all other pleadings and proceedings in equity, for the first folio of 90 words, *two rupees*,..		2	0
For every other folio of 90 words, *eight annas*, ...		0	8
For engrossing same, per folio, of 90 words, *eight annas*,.....		0	8
For close and other copies of pleadings, or other matters on the equity side of the Court, when necessary, per folio of 90 words, *eight annas*, ...		0	8
For drawing briefs for advocates in equity (each sheet to contain 6 folios of 90 words) per sheet, *four rupees*, ...		4	0
For every copy, per said sheet, *two rupees*,		2	0
For perusing papers and pleadings in each cause to prepare for trial or hearing, *three rupees*, ...		3	0
For copies of translations of papers to be filed or read in Court, per folio, *eight annas*, ...		0	8
For short instructions for advovate to move, *one rupee*,.....		1	0
For a Bengallee translation of every notice from the casual ejector served on a tenant			

		Sa. Rs.	As.
	in possession, not being an European, *eight annas*, ...	0	8
	For every necessary attendance at the gaol, *five rupees*,.....	5	0
	For accommodation fee, *five rupees*,.....	5	0
	For every bill of costs and copy to tax in common law causes, *five rupees*,.....	5	0
	For every bill of costs and copy to tax, in Equity, when the suit does not go beyond answer, *five rupees*,.....	5	0
	And for every bill of costs and copy, when the suit goes further than answer, *ten rupees*.	10	0
15th June 1829.	For every effectual attendance before the Master upon reference of matters in which he has to make his report, if no Counsel is employed by the attorney, *ten rupees*,.....	10	

THE PROCTORS IN THE ECCLESIASTICAL COURT.

15th Sept. 1803.	For drawing and engrosssing every proxy, whether general or special, every declaration instead of an inventory, every renunciation, for every attendance on a judge at the desire of an executor, administrator, or party principal, and for every other extra judicial attendance, except at any of the offices of this Court, *three rupees and eight annas*,....	3	8
	For drawing, engrossing and endorsing every original citation, and for every attendance in court, *two rupees*,...	2	0
	For a copy of every original citation to be left with the party cited, and for every act sped in Court, *one rupee*,.....	1	0
	For every act sped out of Court, *one rupee and eight annas*,.....	1	8
	For drawing every libel, set of special answers, and other pleadings, and every other instrument, matter, or thing, which it is the business of a proctor to draw, for the first folio of 90 words, *two rupees*,....	2	0
	For every other folio of 90 words, *ten annas*,	0	10
	For engrossing same per folio, *ten annas*,..	0	10
	For close copies of ditto, when necesaary, (such necessity to be judged of by the Master,) per folio, *eight annas*,....	0	8

		Sa. Rs.	As.
	For making any special argument or for information on the merits of the cause, where no advocate can be had, *six rupees*,	6	0
	For every letter of demand at the commencement of a suit, for all other letters for term fees, bills of costs, attendances accommodation fees, for drawing and copying briefs, and for short instructions for Counsel, the proctors are to receive the same sums as are to be paid to the attornies of the Supreme Court in the like cases in Equity.		

THE PROCTORS IN THE COURT OF ADMIRALTY.

	For drawing and engrossing every proxy, *four rupees*,.....	4	0
	For drawing and engrossing a certificate to be signed and sealed by the sheriff of the execution of every warrant, monition, or other mandatory process, *two rupees*,	2	0
	For drawing the first decree of contumacy in a cause where the defendant cannot be arrested, also for drawing libels, answers, exceptions, and other pleadings, and every other instrument, matter, or thing, which it is the business of a proctor to draw, for the first folio of 90 words, *two rupees*, ...	2	0
15th Sept. 1803.	For every other folio, *ten annas*,.....	0	10
	For engrossing same, per folio, *ten annas*,	0	10
	For attendance, judicial and extra-judicial, for acts sped in Court, or out of Court, for motions and special arguments, where advocates cannot be had, and for close copies of every thing which it is necessary to copy, the proctors are to receive the same sums as they would be entitled to receive for similar matters of ecclesiastic cognizance.		
	For every letter of demand at commencement of a suit, for all other letters, for term fees, bills of costs, attendances, accommodation fees, and for drawing and copying briefs and short instructions for counsel, and for every other matter and thing, the proctors are to receive the same sums as are allowed to the proctors in the Ecclesiastical Court, in like cases		

ATTORNIES' FEES FOR TAKING OUT SUBPŒNAS.

Number of Witnesses,.....	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Instructions for Subpœna, ...	2-8	2-8	2-8	2-8	2 8	2-8	2-8	2 8	2-8	2 8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2-8
Attending to bespeak,.....	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Ditto Receipt of ditto & paid,	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Ditto Sealer and paid,.....	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2	2
Ditto Service and Copy,.....	2	4	6	8	10	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40
Examining Witnesses,.....	2-8	2-8	2 8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2 8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2-8	2-8
Total Expense,.....	12	14	16	18	20	22	24	26	28	30	32	34	36	38	40	42	44	46	48	50

One rupee additional in Equity.

COSTS OF ENTERING UP JUDGMENT UPON A WARRANT OF ATTORNEY.

		Sa. Rs.	As.
4th Term 1798.	Instructions to sue, *two rupees and eight annas*.....	2	8
	Warrant to sue, *two rupees*,....	2	0
	Drawing plaint, four folios, *three rupees and eight annas*,.....	3	8
	Engrossing plaint, *two rupees*,.....	2	0
	Attending to file plaint, *one rupee*,.....	1	0
	Paid filing, *two rupees and eight annas*,....	2	8
	Paid for certificate of bond having been produced, *one rupee*,.....	1	0
	Attending defendant's attorney to desire him to sign cognovit, *two rupees and eight annas*, ...	2	8
	Paid Prothonotary for drawing cognovit, two folios, *one rupee and four annas*, ...	1	4
	Paid Prothonotary for incipitur, two folios, *one rupee and four annas*, ...	1	4
	Record and judgment, *five rupees and eight annas*,.....	5	8
	Parchment for record, *two rupees*, ...	2	0
	Attending office to examine record before signed, *one rupee*,.....	1	0
	Attending afterwards having found the same correct, with opponent's attorney to sign, *one rupee*.....	1	0
	Paid Master's attendance, granting summons, *five rupees*,.....	5	0
	Summons, *one rupee*,.....	1	0
	Oath of service of summons, *one rupee*,....	1	0
	Attending Master's office on taxation of costs, *two rupees and eight annas*, ...	2	8
	Paid Master's fees on taxation, *five rupees*,	5	0
	Attending plaintiff's attorney on receipt of warrant, *two rupees and eight annas*, ..	2	8
	Attending to enter an appearance for defendant, *one rupee*,.....	1	0
	Paid entering appearance, *one rupee*,.....	1	0

Additional Costs for entering up Judgment on an old Warrant.

	Drawing and engrossing affidavit two folios, *three rupees and eight annas*,.....	3	8
	Attending before Judge to get same sworn, *two rupees and eight annas*,.....	2	8
	Paid Judge's clerk's fees of oath, *one rupee*,	1	0
	Motion paper, *one rupee*,.....	1	0
	Paid Counsel's fees, *eight rupees*,..	8	0

	Sa. Rs.	As.
Attending Court when motion made, *two rupees and eight annas*,	2	8
Paid Prothonotary minuting motion, *one rupee*,	1	0
Order of Court, *one rupee and eight annas*,	1	8
Attendance for same at Prothonotary's office, *one rupee*,	1	0
Attending sealer to get order sealed, *one rupee*,	1	0
Paid sealer, *one rupee*	1	0

COSTS OF EXECUTION.

Attending Prothonotary for ca. sa. or fi. fa. *one rupee*,	1	0
Paid Prothonotary for writ, *four rupees*, and for filing return, *one rupee—five rupees*,	5	0
Endorsing sum to be levied in Court, *two rupees*,	2	0
Attending sealer for seal to writ, *one rupee*,	1	0
Paid sealer for seal, *one rupee*,	1	0
Attending on client for person to point out defendant or his property, *two rupees and eight annas*,	2	8
Attending Sheriff's office with writ, *one rupee*,	1	0
Attending at Sheriff's office afterwards to search service of writ, *one rupee*,	1	0
Paid Sheriff serving writ, *two rupees*, for translate of writ, *eight annas*, return of writ, *one rupee—three rupees and eight annas*,	3	8
Attending Prothonotary's office to see return entered on record, *one rupee*,	1	0
Paid Prothonotary entering return on the record, *one rupee and four annas*,	1	4
Attending Sheriff for amount levied, *one rupee*,	1	0
Paid Sheriff search for amount levied, *eight annas*,	0	8
Drawing receipt to Sheriff for amount levied, *two rupees*,	2	0
Attending client with amount, *two rupees and eight annas*,	2	8

IN THE VICE ADMIRALTY COURT OF CALCUTTA.

Fees to be taken by the Judge, Registrar, Marshal, and Proctor.

BY THE JUDGE.

		£.	s.	d.
June 1814.	On entering answers, *two shillings*,..... ..	0	2	0
	On bail produced, *two shillings*,.....	0	2	0
	On examination of witnesses, namely, for the first witness, *two shillings*,.....	0	2	0
	For every further witness, *one shilling*,.. .	0	1	0
	On the admission of claim and an order for further proof, *thirteen shillings and four pence*,.....	0	13	4
	For every sentence, or final interlocutory decree, *two pounds*, ...	2	0	0

BY THE JUDGE FOR SEALS.

	£.	s.	d.
Monition, *six shilling*,.....	0	6	0
Compulsory, *six shilling*,.....	0	6	0
Warrant, *fifteen shillings and four pence*,..	0	15	4
Supersedeas, *fifteen shillings and four pence*,	0	15	4
Attachment, *fifteen shillings and four pence*,	0	15	4
Restitution, *fifteen shillings and four pence*,	0	15	4
Commission, *fifteen shillings and four pence*,	0	15	4
Commission of appraisement and delivery, *one pound, thirteen shillings and four pence*,	1	13	4
Commission of appraisement and sale, *one pound, ten shilling and eight pence*, ...	1	10	8
Exemplification, *one pound, thirteen shillings and four pence*,.....	1	13	4
Letter of marque, *three pounds and ten shillings*.....	3	10	0
Certificate thereof, *one pound*,.	1	0	0
Decree. *six shillings*.....	0	6	0
Decree of appraisement and sale, *twelve shillings*,.....	0	12	0
Transmission of a process, *fifteen shillings and four pence*,..... ....|...	0	15	4
Certificate of condemnation, *one pound, thirteen shillings and four pence*, ...	1	13	4

BY THE REGISTRAR.

	£.	s.	d.
Attendance before the Judge or Surrogate in Chambers, or on an extra Court day in Court, *thirteen shillings and four pence*,	0	13	4

	£	s.	d.
Attachment, *two pounds, eight shillings and four pence,*	2	8	4
Bail-bond, *seven shillings,*	0	7	0
Compulsory against a witness, *six shillings and two pence,*	0	6	2
Commission to take answers, *one pound and one shilling,*	1	1	0
Commission for the examination of witnesses, *one pound,*	1	0	0
Certificate of condemnation or sale of a vessel in order to obtain a British register, *one pound, seventeen shillings and four pence,*	1	17	4
Decree for answers, *six shillings and two pence,*	0	6	2
Decree of unlivery, *eighteen shillings,*	0	18	0
Decree of appraisement, *eighteen shillings,*	0	18	0
Decree of sale, *eighteen shillings,*	0	18	0
Decree of appraisement and sale, *one pound, sixteen shillings and eight pence,*	1	16	8
Decree of removal, *one pound, one shilling and eight pence,*	1	1	8
Decree of inspection, *one pound, one shilling and eight pence,*	1	1	8
Decree of survey, *one pound, one shilling and eight pence,*	1	1	8
Decree of delivery of ship or goods, *eighteen shillings,*	0	18	0
Exemplification, if contained on one skin of parchment, and not exceeding 12 folios of 90 words each, *two pounds, one shilling and four pence,*	2	1	4
And for every additional folio of 90 words, *one shilling and four pence,*	0	1	4
For taking examination in preparatory on the standing interrogatories:—			
If in English, for each witness, *two pounds, six shillings and eight pence,*	2	6	8
If by interpretation, *three pounds, six shillings and eight pence,*	3	6	8
To the interpreter, *three pounds, eight shillings and eight pence,*	3	8	8

N. B.—In cases of recapture one witness only to be allowed for, unless ordered by the Judge, upon special application, or afterwards approved by him under the circumstances of the case.

For taking the Examination of each Witness on a Plea or Allegation

	£	s.	d.
If in English, *thirteen shillings and four pence,*	0	13	4
If by interpretation, *one pound, six shillings and eight pence,*	1	6	8
To the interpreter, *two pounds and two shillings,*	2	2	0
For taking the examination of each witness on interrogatories filed by the adverse party.—			
If in English, *ten shillings*	0	10	0
If by interpretation, *one pound,*	1	0	0
To the interpreter, *two pounds and two shillings,*	2	2	0
To the Examiner for extra labour, for every folio of 90 words, *one shilling,*	0	1	0
Filling an attestation, *five shillings and four pence,*	0	5	4
Filling an exhibit, *two shillings,*	0	2	0
Filling a libel, allegation, proxy, or petition, *eight shillings,*	0	8	0
Filing a claim and attestation, *thirteen shillings and four pence,*	0	13	4
Filing an agent's account and attestation, *thirteen shillings and four pence,*	0	13	4
Attendance when the same is exhibited, *thirteen shillings and four pence,*	0	13	4
Act thereon, *two shillings,*	0	2	0
Office copy of an attestation as to ship's papers, *ten shillings,*	0	10	0
Translating from the French, Latin, Italian, Spanish and Portuguese languages, per folio of 90 words, *four shillings,*	0	4	0
——— from the Dutch, German, Swedish, and Danish, per folio, *five shillings,*	0	5	0
——— from log books in all said languages, *six shillings,*	0	6	0
——— from the Russian, Turkish, and other languages of unfrequent occurrence, and in all cases in which difficulties may arise, the charge for translating to be at the discretion of the Judge			
To the translator for his attestation or certificate in verification of the translation, *thirteen shillings and four pence,*	0	13	4
Entering answers for every sheet of paper, containing 12 folios of 90 words, *twelve shillings,*	0	12	0

		£	s.	d
	Office copies of examination and ship's papers, and all other papers, for every sheet, containing 12 folios of 90 words, *twelve shillings*,	0	12	0
	On the admission of a claim, and an order for further proof, *eight shillings and eight pence*,	0	8	8
	Monition against a prize, *six shillings and two pence*,	0	6	2
	Monition against a captor to proceed to adjudication, *one pound and fifteen shillings*,	1	15	0
	Monition for payment of costs and damages, *one pound, seven shillings and two pence*,	1	7	2
	For every other monition, *one pound and one shillings*,	1	1	0
	Setting out a cause in the Judge's book for the hearing, *seven shillings*,	0	7	0
	Interlocutory or sentence fee, *thirteen shillings and four pence*,	0	13	4
	Drawing an interlocutory act, *fifteen shillings and four pence*,	0	15	4
June 1814.	Drawing a sentence act, *thirteen shillings and four pence*,	0	13	4
	Restitution, *eighteen shillings*,	0	18	0
	For acts, sportulege, and attendances in every cause proceeding to a sentence or final decree, (cases under £ 100 and recaptures excepted,) *three pounds*,	3	0	0
	In cases of recapture, *one pound, six shillings and eight pence*,	1	6	8
	In cases under £100 no fee,			
	Register's clerk on every sentence or interlocutory decree, (except as before excepted) *ten shillings*,	0	10	0
	Office copy of an interlocutory decree or sentence, *sixteen shillings*,	0	16	0
	Registering a prize agent's letter of attorney generally, *thirteen shillings and four pence*, 0 13 4			
	Copy for Greenwich Hospital, *six shillings and eight pence*, 0 6 8			
	Transmitting in certificate *thirteen shillings and four pence*, 0 13 4			
		1	13	4
	And for every additional folio of 90 words, *two shillings*,	0	2	0
	Registering the same specially for each prize, *one pound, ten shillings and eight pence*,	1	10	8

	£	s.	d.
Poundage on money paid out of the registry per £ sterling, *two pence*, ...	0	0	2
For collating copies of papers left in the place of originals delivered out of the registry, each exhibit, *five shillings*,. ..	0	5	0
A receipt, *three shillings and four pence*,..	0	3	4
Taxing a bill of costs, each party, *one pound and one shilling*,.....	1	1	0
Taxing an agent's account, each party, *one pound and one shilling*, ...	1	1	0
For every letter of marque, *eight pounds, eight shillings and eight pence*, ...	8	8	8
Transmitting proceedings to the High Court of Appeals for prizes, for every folio of 90 words, *one shilling*, ...	0	1	0
To the Register's clerk for copying, for every folio of 90 words, *three pence*,....	0	0	3
N. B. Property under £100 to be restored without a claim, upon the attestation of the party as to the property and value, and by interlocutory decree; and if under £50 without an interlocutory decree; and in both cases no charge to be made for acts, sportulage and attendances.			

BY THE MARSHAL.

For the service of a monition, *thirteen shillings and four pence*,.....	0	13	4
——— ——— a decree for answers, *ten shillings*, ...	0	10	0
——— ——— a compulsory, *thirteen shillings and four pence*, ...	0	13	4
——— ——— an attachment, *one pound and two shillings*, ...	1	2	0
The above fees to be paid when the instruments are served within a mile of the Court; if the distance is greater, the charge to be reasonably increased at the discretion of the Judge			
For reporting bail for a letter of marque, *one pound and ten shillings*, ...	1	10	0
For reporting bail for any other matter, *sixteen shillings*, ...	0	16	0
For executing a decree of unlivery, per day, *four pounds and four shillings*, ...	4	4	0
For drawing and engrossing the inventory, *thirteen shillings and four pence*,.....	0	13	4
For executing a decree of appraisement of ship or goods, *four shillings and four pence*,.....	0	4	4

	£	s.	d.
For executing a decree of sale for the first £100, *five pounds*, ...	5	0	0
For every further £100, *two pounds and ten shillings*, ...	2	10	0
For executing a commission of survey of ship or goods, per day, *four pounds and four shillings*.....	4	4	0
On money paid into the registry, pursuant to an attachment, for the first £100, *five pounds*,.....	5	0	0
For every further £100, *two pounds and ten shillings*,.....	2	10	0
Sentence fee, *one pound, one shilling and eight pence*, ...	1	1	8
Interlocutary fee, *seventeen shillings and four pence*, ...	0	17	4
For executing a commission of removals as by special agreement to be made with the parties.			
For ship keeping, if performed by the Marshal, the charge to be at the discretion of Judge.			

BY THE PROCTORS.

Retaining fee, *thirteen shillings and four pence*,.....	0	13	4
Attendance either in Court before the Judge or Surrogate in Chambers, or in the registry, *thirteen shillings and four pence*,..	0	13	4
Act of Court, *two shillings*, ...	0	2	0
Extracting every instrument, *thirteen shillings and four pence*,.....	0	13	4
Upon office copies of depositions, or ship's papers issuing from the registry, including the collating the same with the originals, one-third of the Registar's charge.			
Drawing a claim, *thirteen shillings and four pence*,.....	0	13	4
Drawing an attestation in verification thereof, *one pound, six shillings and eight pence*,.....	1	6	8
Drawing allegations and other pleadings or affidavits, per folio of 90 words, *two shillings*, ...	0	2	0
Engrossing or copying the same and all other papers, per folio of 90 words, *one shilling*,.....	0	1	0

THE

TABLE OF FEES

OF

The Court for the Relief of Insolvent Debtors

AT

CALCUTTA.

THE TABLE OF FEES

OF

The Court for the Relief of Insolvent Debtors.

THE CHIEF CLERK.

	Co.'s Rs.	As.
For filing petition, schedule, and amended schedule, and assignment, including entry of the same in the recordbook, each,	1	0
For every other document which requires to the filed,	0	8
For minuting in the minute book every rule and proceeding, and for every copy thereof, each, per folio,*	0	5
For drawing and fair copying every warrant to the Sheriff, to bring up a prisoner, or for his discharge or release, each, per folio.	0	5
For office copies of all proceedings, per folio,	0	5
For every certificate,	1	0
For each search in his office,	1	0
For reading and marking every exhibit or other proceeding read in Court,	0	8
For each subpœna to witnesses,	1	0
For entering notice of opposition,	0	8
For entering a case in the list of cases, for each day's hearing,	1	0
For every attendance before the Supreme Court with records, books or papers, from his office, on cases appealed or order,	3	0
For affixing the seal,	1	0
For every attendance on the Court or on a Judge at Chambers, with papers from his office, by order of the Court or a Judge, or at the request of any party,	2	0
For examining the affidavit of service of notice upon each creditor, and comparing the same with the schedule of the insolvent, and the order of Court directing the said notices, 2 annas each,	0	2
For every summons and every precept, each,	1	0

THE EXAMINER.

In investigations of accounts and other matters referred by the Court, and for reporting thereon tot he Court, for each hour employed thereon,	16	0
For less than an hour,	10	0
For attending at the gaol to witness the signature of a prisoner to a petition and assignment,	16	0

* The folio consisting of 90 words.

	Co.'s Rs.	As.
For attending the Chief Clerk to file the same,	1	0
For preparing assignment, besides parchment,	5	0
For preparing every notice and advertisement, per folio,	0	5
For every certificate,	1	0
For taking down every examination of a prisoner, or deposition of a witness, per folio,	0	5
For making a fair copy thereof to be filed in Court, (besides parchment) per folio,	0	5
For taking any affidavit at the gaol,	1	0
For attending to file papers with the Chief Clerk,	1	0

THE COMMON ASSIGNEE.

For every certificate,	1	0
For every search in his office,	1	0
For office copies of all accounts, per folio,	0	5

THE TAXING OFFICER.

For taxing every bill of costs, if the amount be less than *two hundred rupees*,	5	0
If two hundred, or more, then for *each hundred*,	3	0
For every summons,	2	0
For every certificate,	1	0
For every oath administered and affidavit sworn before him,	1	0
For every office copy when required, per folio,	0	5

THE ACCOUNTANT GENERAL OF THE INSOLVENT COURT.

For entering and countersigning any order for the payment of money,	2	0
For making and entering every certificate to be annexed to each order,	3	0
For entering every certificate of the Accountant General or Sub-treasurer of the Company,	2	0
For giving any copy of any such order or certificate,	2	0
For giving a copy of any account, per folio,	0	5
For every search of the books,	1	0
For receiving instruction for making a certificate of the funds in the hands of the Accountant General, and for making the same,	1	0

THE JUDGE'S INTERPRETERS.

For translations, per folio,	1	0
For calling on each petition to be heard,	1	0
For every oath administered to the prisoner, and the witnesses, each,	1	0

THE SHERIFF.

	Co.'s Rs.	As.
For bringing up each prisoner before the Court or a Judge, or before the Examiner, on order,	1	0
For every warrant to the gaoler, to discharge a defendant,	1	0
For filing all warrants and orders,	1	0
For every search in his office,	1	0
For every certificate,	1	0

THE GAOLER.

For every certificate,	1	0
For attending with a prisoner before the Court, or a Judge, or before the Examiner, on order,	1	0

THE MESSENGER.

For serving each notice in Calcutta or within five miles thereof,	1	0
For drawing, engrossing and swearing affidavits of service made by them, for each person served,	0	4

ATTORNEY'S FEES.

Attendance in prison, taking instructions for petition,	6	9
Notice to Sheriff and service,	2	0
Drawing and engrossing petition,	3	0
Preparing and attesting estate paper,	2	0
Ditto, if second page written, additional,	1	0
Attending to lodge or file petition, with accompanying documents,	3	5
Attendances in prison, taking instructions for schedule,	6	9
Drawing schedule, per folio of 72 words,	0	9
When the number of debtors exceeds 20, then, for the excess above 20, per folio only 5 annas, viz. two words to be computed as one,	0	5
Engrossing schedule, per folio,	0	5
Fair copy for prisoner, if required, per folio,	0	5
General balance sheet, common case,	5	0
Ditto per additional sheet,	2	7
Drawing and engrossing petition and affidavit for leave to file petition or schedule, time having expired, on printed form common case,	4	0
Drawing and engrossing if another half sheet is necessary for the debtor and creditor account, additional,	1	7
All attendances relating to such application,	6	9
Attending at prison, reading over and attesting a schedule,	6	9
Attending to file schedule and for order for hearing,	3	5

	Co.'s Rs.	As.
Attending insolvent for his books, &c. indorsing the same and lodging them at the office,	3	5
Attendance to insert advertisement,	3	5
Copies of order to serve or annex, and examining, including letters for service by the post and attending at the Post Office to put in the same, each,	0	5
Attending messenger to deliver order, copies for service, and lists, and for their return,	3	5
For all lists delivered to messenger, in each case,	1	7
Ditto in respect of each notice specified in such lists, additional,	0	2
Drawing, engrossing, and swearing affidavit of service of copies of order for hearing by the post, in each case,	1	0
Ditto in respect to each letter sworn to, additional,	0	3
Filing affidavit of service, with advertisement,	3	5
Searching with the sheriff, for detainers,	2	7
Searching for notice of opposition,	2	7
Attending Court on days of hearing,	6	9
Attending for order of adjudication and delivering the same to the insolvent,	2	7
Drawing and engrossing affidavits of service of rules, per folio,	0	5
Ditto other affidavits than abovementioned, per folio,	0	9
Taking instructions for special affidavits,	3	5
Taking instructions for brief, for prisoner,	3	5
Instructing Counsel on motion,	3	5
Drawing brief for prisoner, per sheet, of 10 folios,	5	0
For copying ditto, per sheet of 10 folios,	2	7
Attending Counsel, Court on motion, and other necessary attendances, not otherwise mentioned,	3	5
Copy and service of rules, within Calcutta,	3	0
Writing and sending letters, when absolutely necessary,	2	7
Drawing advertisements	2	7
Fair copy ditto, for printer,	1	0
Bills of costs, with copies, and getting the same taxed, with affidavit and all expences and attendances thereon, but not including the officer's fee, in each case,	5	0
Ditto on further taxation after hearing,	1	7
Letters, messengers, stationery, &c. not otherwise charged,	2	0

APPENDIX.

APPENDIX.

VICE ADMIRALTY COMMISSION

DATED 19TH JULY, 1822.

GEORGE THE FOURTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith. To our beloved Sir Robert Henry Blossett, and the Chief Justice of Bengal for the time being, and the person executing the duties of such office, greeting:—We do by these presents, make, ordain, nominate, and appoint you the said Sir Robert Henry Blossett, and the Chief Justice of Bengal, for the time being, and the person executing the duties of such office, to be our "*Commissary in the Vice Admiralty Court at Calcutta*," and territories thereunto belonging, hereby granting unto you full power and authority to take cognizance of, and proceed in all causes, civil and maritime, and in complaints, contracts, offences, or suspected offences, crimes, pleas, debts, exchanges, policies of assurance, accounts, charter parties, agreements, bills of lading of ships, and all matters and contracts, which in any manner whatsoever relate to freight, due for ships hired and let out, transport money, or maritime usury, otherwise bottomry, or which do any ways concern suits, trespasses, injuries, extortions, demands, and affairs, civil and maritime, whatsoever, between merchants, or between owners and proprietors of ships and all other vessels whatsoever, had made, done, or contracted for, any matter, cause, or thing, business, or injury whatsoever, done or to be done, as well in, upon, or by the sea, or public streams, fresh waters, ports, rivers, creeks, and places overflowed whatsoever, within the ebbing and flowing of the sea, or high-water mark, as upon any of the shores or banks adjoining to them, or either of them,

Chief Justice to be Commissary.

Jurisdiction and powers in all causes, civil and maritime, offences, crimes, pleas, debts, &c.

together with all and singular their incident, emergencies, dependencies, annexed and connexed causes whatsoever; and such causes, complaints, contracts, and other the premises above said, or of any of them, howsoever the same may happen to arise, be contracted, had, or done, do hear and determine, according to the civil and maritime laws and customs of our High-Court of Admiralty of England in Calcutta aforesaid, and territories thereunto belonging whatsoever. And also, with power to sit and hold Courts in any cities, towns, and places, in Calcutta aforesaid, for hearing and determining of all such causes and businesses, together with all and singular their incidents, emergencies, dependencies, annexed and connexed causes whatsoever, and to proceed judicially, and according to law, in administering justice therein. And moreover, to compel witnesses, in case they withdraw themselves for interest, fear, favor, or ill will, or any other cause whatsoever, to give evidence to the truth in all and every the causes abovementioned, according to the exigence of the law; and further to take all manner of recognizances, cautions, obligations, and stipulations, as well to the use, as at the instance, of any parties for agreements or debts and other causes and businesses whatsoever, and to put the same in execution, and to cause and command them to be executed; also duly to search and inquire for and concerning all goods of traitors, pirates, manslayers, felons, fugitives, and felons of themselves, and concerning the bodies of persons drowned, killed, or by any other means coming to their death in the sea, or in any ports, rivers, public streams, or creeks and places overflowed, and also concerning Mayhem, happening in the aforesaid places, and engines, toils, and nets prohibited and unlawful, and the occupiers thereof. And moreover, concerning fishes royal, namely, whales, riggs, grampusses, dolphins, sturgeons, and all other fishes whatsoever, which are of a great or very large bulk or fatness, by right or custom any ways used, or belonging to us, and to the office of our High Admiral of England. And also, of and concerning all casualties of sea, goods wrecked, flotzon, jetson and lagon, shares, and treasure found, things cast overboard, and wreck of the sea, and all goods taken or to be taken as derelict, or by chance found or to be found; and all other trespasses, misdemeanors, offences, enormities, and maritime crimes whatsoever, done and committed, as well in and upon the high sea, as all ports, rivers, fresh waters, and creeks, and shores of the sea, to high water mark, from all first bridges towards the sea, in and throughout Calcutta aforesaid, and maritime coast thereunto belonging, howsoever, whensoever, or by what means soever arising or happening, and all such things as are discovered and found out, as also all fines, mulcts, amercements, and compositions due, and to be due in that behalf, to tax, moderate, demand, collect and levy, and cause the same to be demanded, levied, and

Power to hold Courts, &c.

To compel witnesses to give evidence.

To take recognizances, &c.

To search for the goods of traitors, &c.

Concerning fishes, &c.

And all casualties at sea, &c.

And maritime crimes.

All fines, mulcts, &c. to be taxed and levied.

collected, and according to the law, to compel and command them to be paid. And also to proceed in all and every the causes and businesses above recited, and in all other contracts, causes, contempts, and offences, whatsoever contracted or arising, so that the goods or persons of the debtors may be found within the jurisdiction of the Vice Admiralty in Calcutta aforesaid, according to the civil and maritime laws and customs of our said High Court of Admiralty of England, anciently used, and by all other lawful ways, means, and methods, according to the best of your skill and knowledge, and all such causes and contracts, to hear, examine, discuss, and finally determine, (saving, nevertheless, the right of appealing to our aforesaid High Court of Admiralty of England, and to the Judge or President of the said Court, for the time being. And saving always, the right of our said High Court of Admiralty of England, and also of the Judge and Register of the said Court, from whom or either of them it is not our intention in any thing to derogate by these presents.) And also, to arrest, and cause and command to be arrested, all ships, persons, things, goods, wares, and merchandizes, for the premises and every of them, and for other causes whatsoever concerning the same, wheresoever the same shall be met with or found within Calcutta aforesaid, and the territories thereof either within liberties and franchises or without, and to compel all manner of persons in that behalf, as the case shall require, to appear and to answer, with power of using any temporal coercion, and of inflicting any other penalty or mulct, according to the laws and customs aforesaid, and to do and minister justice, according to the right, order, and course of the law, summarily and plainly, looking only into the truth of the fact. And we empower you in this behalf, to fine, punish, correct, chastise, and reform, and cause and command to be imprisoned in any gaols, being within Calcutta aforesaid, and maritime parts of the same, the parties guilty, and violators of the laws and jurisdiction of our Admiralty aforesaid, and usurpers, delinquents, and contumacious absenters, masters of ships, mariners, rowers, fishermen, shipwrights, and other workmen or artificers whatsoever, exercising any kind of maritime affairs, as well according to the civil and maritime laws and ordinance and customs aforesaid, and their demerits, as according to the statutes and ordinances aforesaid; and those of our United Kingdom of Great Britain and Ireland, for the Admiralty of our said United Kingdom, made and provided in that behalf, and to deliver and absolutely discharge, and cause and command to be discharged, whatsoever persons imprisoned in such cases, who are to be delivered, and to promulgate and interpose all manner of sentences and decrees, and to put the same in execution; with cognizance and jurisdiction of whatsoever other causes, civil and maritime, which relates to the sea, or which in any manner or ways

To proceed in all businesses and causes as the High Court of Admiralty in England.

Saving nevertheless a right of appeal to the High Court of Admiralty, and the rights of the said Court.

Power to arrest all ships, persons, things, &c.

And to compel appearance and answer, &c.

Power to fine, punish, correct, and imprison parties guilty,

Masters mariners, &c.

Sentences and decrees.

General jurisdiction of all other causes.

respect or concern the sea or passage over the same, or naval or maritime voyages performed, or to be performed, or the maritime jurisdiction above said, with power also to proceed in the same, according to the civil and maritime laws and customs of our said Court, anciently used, as well those of mere office mixed or promoted, as at the instance of any party, as the case shall require, and seem convenient. And we do by these presents, which are to continue our royal will and pleasure only, further give and grant unto you Sir Robert Henry Blossett, and the Chief Justice of Calcutta for the time being, and the person executing the duties of that office, our said Commissary, the power of taking and receiving all and every the wages, fees, profits, advantages, and commodities whatsoever, in any manner due, and anciently belonging to the said office, according to the customs of our High Court of Admiralty of England, committing unto you our power and authority, concerning all and singular the premises in the several places above expressed, (saving in all things the prerogative of our High Court of Admiralty of England aforesaid,) together with deputing and surrogating in your place for and concerning the premises, one or more deputy or deputies, as often as you shall think fit. Further, we do in our name command, and firmly and strictly charge all and singular, our Governors, Commanders, Justices of the Peace, Mayors, Sheriffs, Marshals, Keepers of all our gaols and prisons, Constables, and all other our officers and ministers, and faithful and liege subjects, in and throughout Calcutta aforesaid, and the territories thereunto belonging, that in the execution of this our Commission, they be from time to time aiding, assisting, and yield obedience in all things as is fitting to you or your deputy whomsoever, under pain of the law, and the peril which will fall thereon. Given at London, in the High Court of our Admiralty of England, under the Great Seal thereof, the nineteenth day of July, in the year of our Lord One Thousand Eight Hundred and Twenty-two, and of our reign the third.

Power to the judge to execute the office of Commissary, &c.; and to receive fees of office.

Power to depute and surrogate.

Mandate for all persons to assist.

CHARTER, 13 GEO. 1.

Dated 24th September, 1726.

Establishes a corporation at each of the Presidencies of Madraspatnam, Bombay, and Fort William, to consist of a Mayor and nine Aldermen.

Establishes a corporation at each of the presidencies.

Ordains and appoints, that the Mayor and Aldermen are thereby constituted a Court of Record, by the name of the Mayor's Court, with power to hear and determine all civil suits, actions, and pleas, between party and party, arising within the towns of Madras, Bombay, and Calcutta, or within any of the factories subordinate thereto respectively, upon complaints in writing, by any person or persons against any other person or persons whatsoever, then residing within the said towns, or the precincts, districts, or territories thereof.

Mayor and Aldermen to be a Court of Record.

Jurisdiction in civil actions.

Gives Ecclesiastical jurisdiction to grant probates of wills, and letters of administration to estates of intestates.

Ecclesiastical jurisdiction.

Appoints the Governor and Council to be Justices of the Peace.

And establishes a Court of Quarter Sessions at Madraspatnam, Bombay, and town or factory of Calcutta at Fort William, as follows:

And We do further for Us, our heirs and successors, give and grant unto the said Company, and their successors, and do by these presents will, ordain, establish, and appoint, that the Governor or President and Council of Fort Saint George aforesaid, for the time being, shall be Justices of the Peace, and have power to act as Justices of the Peace, in and for the said town of Madraspatnam, and in and for Fort Saint George, Fort Saint David, Vizagapatnam, the factories on the Coast of Sumatra, and all other the factorries subordinate at Fort Saint George aforesaid, in the same and the like manner and with the same or the like powers as Justices of the Peace, constituted by any commission or letters patent under Our great seal of Great Britain, for any county, city, or town corporate, in that part of our said kingdom called England, do or may exercise such office.

Governor or President and Council of Fort Saint George to act as Justices of the Peace.

And Our further will and pleasure is, and we do by these presents for Us, our heirs and successors, give and grant unto the said Company and their successors, that the Governor or President of Fort Saint George, and the Council for the time being, or any three or more of them, (whereof the Governor or President, or in his absence the senior of the Council, then

Governor or President and Council, or any three of them (whereof Governor or President or in his

absence the senior, Council to be one,) shall hold Quarter Sessions four times in the year.

And be Commissioners of Oyer and Terminer and Gaol Delivery.

To issue precept to Sheriff to summon Juries.

Proceedings the same as before Justices of the Peace and Commissioners of Oyer and Terminer in England.

residing at Fort Saint George to be one,) shall and may hold Quarter Sessions of the Peace, four times in the year, within the district aforesaid, and shall at all times hereafter, be a Court of Record, in the nature of a Court of Oyer and Terminer and Gaol Delivery, and shall, from time to time, and at all times hereafter, be Commissioners of Oyer and Terminer and Gaol Delivery, for the trying and punishing all offenders and offences (high treasons only excepted) had, committed or done within the said town of Madraspatnam, Fort Saint George, or within any of the said factories or places subordinate thereto, and that it shall and may be lawful to and for the said Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery respectively, to proceed by indictment, or by such other ways, and in the same or like manner as is used in that part of Great Britain called England, as near as the condition and circumstances of the place and inhabitants will admit of, and for that purpose to issue their warrant or precept to the sheriff of the said district for the time being, commanding him to summon a convenient number of the principal inhabitants within the said district, to serve and attend as grand and petit Juries at the said Court respectively; and that the said Justices of the Peace and Commissioners of Oyer and Terminer, and Gaol Delivery respectively, shall and may deliver to them the usual oath taken in England by the grand and petit Jury, and also administer to the witnesses who shall be produced for or against the party to be tried, a proper oath or affirmation, (that is to say) an oath upon the Holy Evangelists to any witness or witnesses, who shall profess the Christian religion, and to administer an oath or solemn affirmation to any other witness or witnesses, natives of India, in such manner as they, according to their several castes, shall esteem to be most binding on their consciences, to oblige them to speak the truth; and that the said Justices and Commissioners shall and may respectively proceed to the arraignment, trial, conviction and punishment of persons accused of any crimes or offences (high treason excepted) in the same or like manner and form as near as the condition and circumstances of the place and inhabitants will admit of, as any of our Justices of the Peace or Commissioners of Oyer and Terminer and Gaol Delivery in England, do or may proceed by virtue of any commission by Us granted for that purpose; and shall and may respectively do all other acts that Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery usually and legally do, and that the said Courts may assemble and adjourn at and unto such times and places as they shall judge convenient.

Governor or President to take the usual oaths.

And We do hereby direct that the Governor or President of Fort St. George aforesaid shall, before the Council there or the major part of them, take an oath faithfully to execute the said offices of Justice of the Peace and Commissioner of Oyer and

Terminer and Gaol Delivery, together with the oath of allegiance, which oaths they are hereby authorized and empowered to administer, and after the taking of such oaths, we do hereby authorize the said Governor or President to administer the same oaths to the rest of the Council as Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery.

And administer the same to the Council.

And We do further for Us, our heirs and successors, give and grant unto the said Company, and their successors, and do by these presents ordain, direct, establish and appoint, that the Governor or President and Council of Fort William in Bengal aforesaid, for the time being, shall be Justices of the Peace, and have power to act as Justices of the Peace and as Commissioners of Oyer and Terminer and Gaol Delivery, and that they or any three or more of them (thereof the Governor or President, or in his absence the senior of the Council then residing at Fort William aforesaid, to be one) shall and may hold Sessions of the Peace and of Oyer and Terminer and Gaol Delivery respectively, in and for the said town or factory of Calcutta at Fort William in Bengal, and other the factories subordinate thereto, and do all such other acts as Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery, with such powers, jurisdiction and authorities, and under such regulations and restrictions as are hereinbefore given, granted, limited and appointed, concerning Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery of the said town of Madraspatnam.

Governor or President and Council of Fort William to act as Justices of the Peace and Commissioners of Oyer and Terminer and Gaol Delivery.

Any three hold sessions of the peace and of Oyer and Terminer, with the same powers, as hereinbefore contained.

CHARTER, 26 GEO. 2.

Dated 8th January, 1753.

Recites a petition of the East India Company setting forth the capture of Madras by the French, and the subsequent restoration thereof, but, as they were advised the Mayors Court was dissolved, they surrendered the former Charter, and, upon their prayer, the present Charter is granted.

Establishes a corporation at each of the Presidencies of Madraspatnam, Bombay and Fort William as before, to be a Court of Record, with like jurisdiction and powers in civil and ecclesiastical cases, as given by the former Charter.

And also a Court of Requests for the recovery of small debts.

Appoints the Governor and Council, Justices of the Peace, and Commissioners of Oyer and Terminer and Gaol Delivery.

And establishes a Court of Quarter Sessions at Madraspatnam, and Bombay, and for the town or factory of Calcutta at Fort William as in the former Charter.

PROCLAMATION

FIXING

THE LIMITS OF CALCUTTA

Issued by the Governor General in Council, on the 10th September 1794.

WHEREAS in and by the 159th Section, Chap. 52 of an Act passed in the 33d year of His Majesty's Reign, entituled "An "Act for continuing in the East India Company, for a limited "time, the possession of the British territories in India, toge- "ther with their exclusive trade, under certain limitations; for "establishing further regulations for the Government of the "said territories, and the better administration of justice "within the same; for appropriating to certain uses the re- "venues and profits of the said Company; and for making "provision for the good order and Government of the town of "Calcutta, Madras, and Bombay, "It is enacted that" if any "question shall arise touching or concerning the true limits and "extent of the said towns and factories or any of them, the "same shall be inquired into by the Governor General in Coun- "cil at Fort William, in respect to the limits and extent of Cal- "cutta, and by the Governor in Council of Fort St. George, "in respect to the limits and extent of Madras, and the Gover- "nor in Council at Bombay, in respect to the town of Bombay, "and that such limits as the said respective Governments, by "order in Council, shall declare and prescribe to be the limits "of the said towns and factories respectively, shall be held, "deemed, and taken in law as the true limits of the same, any "custom or usage to the contrary notwithstanding." And whereas such question, as in and by the said clause of the said Act is meant and referred to, has arisen and been made with respect to the limits of the said town of Calcutta, and the Governor General in Council, in pursuance of the authority vested in him by the said Act, has inquired into the same, and by an order duly made in Council has declared and prescribed the limit of the said town, and has directed and commanded the same to be publicly notified, in order that the said limits, so declared, and prescribed, may be known to the inhabitants of the said town, and to all persons whom the same may, in any wise concern, IT IS HEREBY PUBLICLY NOTIFIED, that the town of Calcutta, in respect to all legal intents and purposes, extends to, and is bounded by, the several lines, limits, and boundaries hereinafter mentioned and described, that is to say,

THE NORTHERN BOUNDARY

is declared to commence, and does accordingly commence, on the West side of the River Hooghly as the Post or Mete No. 22, situated at the North point of Colonel Robertson's Garden, called Jackapore, immediately opposite to the mouth of the Brook called Chitpore Nullah, or Baug Bazar Nullah, and the said Northern Boundary is from thence declared to continue, and is continued accordingly, by a line drawn across the river from the aforesaid point to the south corner of the mouth of the said Nullah, unto the Post or Mete No. 1, near the foot of the Chitpore Bridge, and from thence by a line drawn Eastward, and passing the south end of the said Bridge to No. 2, and from thence along the south side of the said Nullah or Brook, to the Post or Mete No. 3, and thence on to the Post or Mete No. 4. passing the Old Powder Mill Bazar, until it reaches the foot of the Bridge leading to Dum-Dum where the Post or Mete No. 5 is.

THE EASTERN BOUNDARY

is declared to commence, and does accordingly commence at the said Post or Mete No. 5, and is declared to continue, and does accordingly continue by a line traced along the West or inner side of the Mahratta Ditch or Entrenchment, and the East side of the road adjoining thereunto, until it reaches the Post or Mete No. 6, at the northern angle next to the road of an enclosure called Halsee Bagaun, which said Halsee Bagaun is included within the said town of Calcutta, and from the said northern angle by a line drawn eastward along the southern side of the Ditch or Trench, which encloses the said Halsee Bagaun to the Post or Mete marked No. 6, and from thence Southward, along the Western side of the said Ditch or Trench, to the Post or Mete also marked No. 6, and from the said last mentioned Post or Mete Western along the Northern side of the said Ditch or Trench until the said line reaches the mark No. 7, where there is a Tannah, and from the said last mentioned Post or Mete, by a line drawn Southward, and on the Western side of the Mahratta Entrenchment and the Eastern side of the Bytaconnah Road, as far as the remains of the said Mahratta Entrenchment are visible to the Post or Mete No. 8, at the corner of Rajah Ramlochun's Bazar, and of the Road leading to Ballea Ghaut, immediately opposite to Narrain Chatterjee's Road, and from the said last mentioned Post or Mete No. 8, by a line continued in a Southern direction passing through Mirzapore, and drawn along the Eastern side of the Bytaconnah Road, and leaving the Portuguese Burying Ground to the East until it reaches the Bytaconnah Tree, where the two Posts or Metes. marked respectively No. 9 & No. 10, are fixed on each side of the Road, opposite to the Bow Bazar Road and Bytaconnah Bazar, and from the last mentioned Post or Mete, marked No. 10, by a line drawn along the Eastern side of the said Bytaconnah

Road to the Post or Mete No. 11, opposite to Gopee Baboo's Bazar, which Bazar is situated between the Jaun Bazar and Durrumtollah Roads, and from thence in the same direction until the said line reaches the Post or Mete No. 12, at the point or turning of the said Road towards the West, leaving Dhee Sreerampore on the East, and thereby including within the limits of Calcutta the Protestant Burying Ground, Chowringhee, and the lands thereunto belonging called Dhee Birjee.

THE SOUTHERN BOUNDARY

is declared to commence, and does accordingly commence from the last mentioned Post or Mete No. 12, and is declared to continue, and does accordingly continue, by a line drawn from thence to the Westward with a little inclination to the Southward, along the Southern side of the Public Road, excluding Dhee Chuckerbeer and including Bunneapokah otherwise called Arreapokah, in Dhee Birjee until the said line reaches the beginning of the Russapuglah Road immediately opposite to Chowringhee high Road, where the Post or Mete No. 13, is fixed, and from the said Post or Mete No. 13, by a line running to the Westward along the Southern side of the Public Road to the Post or Mete No. 14, fixed between the Tannah and the General Hospital, and passing on Westerly to the Post or Mete No. 15, at the foot of Allipore Bridge, and excluding the General Hospital aforesaid, the Hospital for Insanes, and the Hospital Burying Ground, situated in Dhee Bobanipore, and from thence and from the South side of the said Allipore Bridge, by a line drawn and continued along the South side of the Nullah commonly called Talley's Nullah, at high water mark to the Post or Mete marked No. 16, and from thence passing the foot or South end of Surmon's Bridge, commonly called Kidderpore Bridge, and extending to the mouth of the said Nullah where it enters the River Hooghly excluding Watson's Dock, and to the Post or Mete marked No. 17, and then proceeding from East to West across the said River Hooghly to the South East point of Major Kyd's Garden and excluding the said Garden, and village of Sheebpoore, at which point a Post or Mete marked No. 18, is directed to be fixed, and

THE WESTERN BOUNDARY

is declared to commence, and does accordingly commence, at the said point where the said Post or Mete marked No. 18, is fixed, and is declared to continue, and does accordingly continue from thence by a line drawn at low water mark along the Western side of the said River Hooghly, but excluding the Ghauts of Ramkissenpore, Howrah and Sulkeah, where Posts or Metes are fixed, marked respectively Nos. 19, 20 and 21, until the said line reaches the Northern point of Colonel Robertson's Garden or Jackapore aforesaid, where a Post or Mete is fixed

marked No. 22, and immediately opposite to the Post or Mete No. 1, at Chitpore Bridge.

Declared and proclaimed by order of the Governor General in Council of Fort William in Bengal, this 10th day of September 1794.

(Signed) E. HAY,

Secretary to the Government.

N. B. It does not appear, that the Local Government have since the passing of the 55. Geo. 3. c. 84., availed themselves of the power conferred on them by that statute, of extending the limits of Calcutta [*C.*]

PROCLAMATION

Declaring and defining the jurisdiction, powers and practice of the Court of Commissioners for the recovery of small debts.

FORT WILLIAM, THE 18TH MARCH, 1802.

By the Honorable the Vice President in Council with the sanction and approbation of His Excellency the Most Noble the Governor General.

PROCLAMATION.

WHEREAS, by an act passed in the thirty-ninth and fortieth year of his Majesty's reign, intituled an act for establishing further Regulation for the Government of the British territories in India, and the better administration of justice within the same, "it was among other things enacted." That it should and might be lawful for the Governor General in Council, to order and appoint in what manner the Court of Requests, for the recovery of small debts, should in future be formed and to what amount in value not exceeding the sum of four hundred sicca rupees, the jurisdiction of the same should extend, and to frame and make such new rules and orders, and to establish and declare such new modes and forms of proceedings as to them should appear to be necessary and expedient, for new modelling, altering and reforming the present constitution and practice of the said Court, and by their Proclamation to be made and published in due form of law to declare and notify

39 & 40 Geo. 3 c. 79.

to all persons concerned, such new constitution, rules, orders, modes and forms of proceeding, and the time from whence they are to have force and effect, and from and after such time as should be so notified for that purpose, the present Court of Requests, as well as the rules, orders, modes and forms of proceeding which are now used and observed therein, should be abolished and ceased, and thenceforth the new Court; rules, orders, modes, and forms of proceeding, which the said Governor General in Council was authorised and empowered, under, and by virtue of the said act, to make and publish, should be in full force and effect. And whereas, we the Vice President in Council, with the sanction and approbation of His Excellency the Most Noble the Governor General, have taken the same into our consideration, and are desirous of carrying the intentions of the Legislature into effect. WE DO, in pursuance of the powers and authorities vested in us, by the said act, by this our proclamation, order, and direct, that from and after the fifteenth day of April next, the present Court of Requests, for the recovery of small debts, in and for the settlement of Fort William, and all powers and authorities held by or exercised under it, shall cease and determine and be of non avail, and we do hereby further order and direct, that a new Court of Bequests, for the recovery of small debts, shall be created in and for the settlement of Fort William, with full power and authority, to hold and exercise all and all manner of jurisdiction, which now is, or which may by law, be held by the present Court of Requests, except in so far as the same is altered or enlarged by this our proclamation, and we do hereby further direct, constitute and appoint, that the said Court shall be composed of three Commissioners, being British subjects, resident in the settlement of Fort William, and shall be named and called "The Court of Commissioners for the recovery of small Debts," and all powers, authorities or jurisdictions now held or which may by law be held, or exercised by the new Court of Requests, together with such further powers and authorities as we are empowered to grant by this our proclamation, shall be held and exercised by the said Commissioners in as full and ample a manner as the same might have been held and exercised by the former Court of Requests, subject only to such alterations and modifications as we made by this our proclamation, and we further hereby order and direct, that Ebenezer Coleman, Esquire, Richard Fleming, Esquire, and Anthony Mactier, Esquire, be the first Commissioners, and shall hold and exercise all powers and authorities hereby granted, or which hereafter may be granted to the Court of Commissioners for the recovery of small debts, during our pleasure, *and* we do hereby direct, that the said Ebenezer Coleman, Esquire, shall be the first Commissioner, and shall be so named and styled, and that the said Commissioners shall respectively hold and enjoy such perquisites and

allowances, as we by our order in Council in that behalf shall order and direct, and the said Commissioners and each of them shall, before they take upon themselves the execution of their office, take the oath of allegiance to his Majesty, and an oath for the faithful discharge of their duty, before the Chief Justice or one of the Justices of his Majesty's Supreme Court of Judicature at Fort William in Bengal. *Whereas*, by the said act, full power and authority is given to us to order and direct, to what amount in value, not exceeding four hundred sicca rupees, the jurisdiction of the said Court shall extend. Now we having maturely considered the same, do hereby, order and direct, that the jurisdiction of the said Court and the Commissioners thereof, shall extend, and is hereby extended to the sum of *one hundred sicca rupees* and no more, and the same shall have full power and authority to hear and determine all and all manner of debts and demands, provided they do not exceed the sum of *one hundred sicca rupees*, and shall issue such process and direct execution in the same manner as the present Court of Requests now do with regard to debts and demands not exceeding the sum of eighty current rupees; *And* it shall and may be lawful to and for every person or persons, who now have, or hereafter shall have, any debt or debts, owing unto him, her or them, not exceeding the value aforesaid, by any person or persons whatsoever, inhabiting or seeking a livelihood within the said Town of Calcutta and settlement of Fort William, to cause such debtor or debtors so inhabiting or seeking a livelihood as aforesaid, to be warned or summoned by the proper officer, to appear before the said Court, at such time and place as shall be therein mentioned, and that the said Court shall, after such summons, as aforesaid, have full power and authority to make or cause to be made, such act, order and orders, decrees, judgments and proceedings, between such party or parties, plaintiffs, and his, her, or their debtor or debtors, defendants, touching such debts as they shall find to stand with equity and good conscience, and shall issue process to compel the appearance of parties and witnesses, and shall proceed to give such final sentence or judgment, or to make such interlocutory or final orders and decrees, touching such debts and demands, and the costs of suit as to them shall appear agreeable to equity and good conscience; And we do hereby, order, direct and appoint that for the ease and convenience of defendants, the said Court shall have power to order and direct debts to be paid by instalments and to give time and day of payment where they shall be satisfied of the inability of the defendant to make immediate payment, and we further order, direct and appoint, that the said Court shall have full power to award and direct execution against the body or goods of the party or parties against whom any judgment, decree or order, shall be made or given, and in regard to the execution against the goods of the party, which the said Court is hereby

empowered to issue the serjeants, bailiffs and peons of the said Court are hereby required and directed to levy the amount for which such execution shall issue, by seizure and distress of the goods and effects of such party, and to keep the same in safe custody until the return of such execution, when they shall report to the said Court, what they shall have done thereupon, and the said Court are hereby empowered to cause the goods and effects so seized, to be sold for the purpose of satisfying the sum or sums of money, and costs for which such execution shall have issued, and the bailiffs, serjeants and peons of the said Court are hereby required and empowered, by virtue of any execution, against the body of such party to apprehend and take or cause to be apprehended, and taken such party and to convey him or her to gaol, there to remain until he or she shall perform such order or decree, and we further order and direct, that whensoever any debtor, who shall be confined in gaol under execution, shall be minded and desirous *bonâ fide* to give up his whole effects to his creditors, it shall and may be lawful for him to apply by petition to the said Court, who shall thereupon summon the creditor before them, and in case he or she shall not be willing to accept of the same in discharge of the debt, that then the Court shall make such order for diet money, as they shall see fit, and if the same shall not be punctually complied with, to discharge the said debtor from gaol and release or acquit him or her from the payment of the money, for which he or she shall have been so committed, and we hereby authorize and empower the said Court, on the application of any person confined in gaol in execution, who shall be willing and desirous to give good security for the payment of the sums contained in the said execution, at such time or times as the Court shall direct, to take the same into their consideration, and upon hearing of the parties to make such order thereupon as they shall think expedient, and either discharge the said debtor from gaol upon such security or otherways as they shall think most consonant to justice. But we further order and direct, that only one writ of execution shall issue at the same time, nor shall any other till after the first shall have been returned, so that no person's body, or goods shall be liable to be taken at the same time for the same debt; Provided always, that so often as any person is desirous of suing out a writ of execution against the goods of any debtor, whose person shall be in execution, the same shall be, when issued, and is hereby declared to be, a release to the person of such debtor, and the same shall be instantly discharged from gaol, and whereas it may frequently happen, that persons may sue their debtors in the said Court of Commissioners for small debts, for sums above the amount here limited and may divide a large demand into several suits, we do hereby strictly prohibit and forbid the same, and order and direct that whenever it shall

appear to the said Court, that any person has brought his suit for a larger demand, or has divided his demand into several suits for the purpose of reducing it within the jurisdiction of the said Court, the same plaintiffs shall be non-suited and shall pay double costs; Provided always that nothing herein contained, shall extend or be construed to extend, to prevent any plaintiff from bringing his suit for a larger debt than one hundred sicca rupees, provided he agree and is willing to limit and restrict his demand to the sum abovementioned, and to release and quit claim to the surplus of the said debt, over and above the said sum, and whereas it often time happens that debtor on being served with process to appear, do abscond or do depart beyond the jurisdiction of the said Court, for the purpose of avoiding being served with the said process; we do hereby order and direct, that in all suits where the debt or demand shall exceed the sum of thirty sicca rupees, it shall and may be lawful for the said Commissioners, or any of them upon a sufficient case being laid before them upon oath, that any person intends to withdraw or is withdrawing his person and effects from the jurisdiction of the said Court, in order to avoid being served with its process or to avoid the judgment thereof, to cause such person to be apprehended and committed to gaol, until he shall find security for his appearance in the same Court, from time to time, until judgment shall be pronounced in the said suit, and we order and direct that from and after the said fifteenth day of April, all and all manner of fees now paid by the suitors of the Court of Requests, shall cease and determine, except the commission which is now received by the clerk thereof, which shall continue to be paid in the manner hereinafter directed, and in lieu thereof, there shall be received and taken the fees and payments set forth in the schedule hereunto annexed, and no more, and the said fees and the commission shall be received and taken by the clerk of the Court of Requests, who shall regularly account for the same, and the said account shall be laid before the Commissioners once in every week, who shall examine and sign the same, and the amount so received of fees and Commissions shall, upon the first Monday in every month, be paid over to the Sub-Treasurer of the Honorable Company's Treasury, and at the same time, an account of the amount of the same shall be certified to the Sub-Treasurer, signed by the said Commissioners, and shall form a fund as far as the same will extend for defraying the salaries directed to be paid to the Commissioners, and such other purposes relating to the said Court as we shall direct, and whereas great complaints have been made of the mode of issuing summonses, and particularly that they contain no day certain when the defendant is to appear, and of the conduct of the inferior officers of the Court of Requests, in order to prevent the like in future, we do hereby order and direct, that in all summonses and other process issued by the said Court of Requests, shall be signed by one of

the Commissioners thereof, and shall be made returnable at a day certain not exceeding one month, from the date of issuing of the same, upon which day the defendant is to appear, and the cause to be proceeded in by examination of parties and evidence in the same manner as such causes are directed to be proceeded in by the instructions sent by the Honorable the Court of Directors, for regulating the proceedings of the Court of Requests in the year one thousand seven hundred and fifty three, except in so far as the same shall have been altered by this our Proclamation, or in so far as the same may be altered by any rules or orders, which it may be found expedient to make for the future Government of the said Court; and we further order and direct; that the said Court shall have full power and authority to make and frame such rules and regulations as may be necessary, to direct the process or the practice of the same; Provided always, that no rule shall be made, which may be inconsistent with this our Proclamation, nor shall any rule or order framed by the said Court, be in force till the same shall have been allowed by the Supreme Court of Judicature, and that the same when so allowed, be printed and published for the information of the public, and we hereby direct and order, that the said Court and its proceedings shall be, and they are hereby declared to be, subject to the controul of his Majesty's Supreme Court, in as full and ample a manner to all interests and purposes as the former Court of Requests; and we further direct, that when and so often as the number of Commissioners in the said Court shall be reduced to two, and the opinions shall be different, that then and in that case the vote of the senior Commissioner present shall decide, and to prevent any delay to plaintiffs or defendants, we do hereby order that summonses be made returnable upon Mondays, Wednesdays and Fridays only, and that they be numbered, that a list shall be kept of all summonses issued, and two days at least before they are returnable, the list for the succeeding Monday, Wednesday and Friday shall be publicly hung up in the room, where the Court sits, and the causes shall be heard in the order they stand in the said list, and such as cannot be heard on the day of the return, shall be heard on the succeeding day, so that if it be possible, the list of the preceding day do not interfere with that of the succeeding, we further order and direct, that the book directed to be kept by the aforesaid instructions from the Court of Directors, shall in future be regularly kept, and the same shall be publicly inspected in Court once in every week, and to insure the observance of these rules, it is ordered, that the senior Commissioner shall once in every Term, lay an abstract of the said books and of the receipts and payments and of the amount of fees received and judgment given under different heads, before the Supreme Court of Judicature, and once in every year shall lay the same before the Governor General in Council.

Whereas great mischiefs have arisen from money being allowed to be paid into the hands of the peons and other inferior officers of the said Court, instead of being paid into Court, although the same was contrary to the rules of the said Court, We do strictly prohibit and forbid the same in future, and we direct, that all monies be paid into the hands of the Chief Officer of the said Court, who shall enter the same in a book as directed by the aforesaid instructions, and the said book of receipts and payments shall be once in every month examined and signed by the Commissioners. We do hereby give and grant power and authority to the said Commissioners, or any two of them to appoint a proper person to be their Clerk, and him to displace at their pleasure, and such person, upon his appointment, shall be entitled to receive such salary as we shall, by our order in Council, order and direct to be paid and allowed to the Clerk of the Court of Requests, and no other perquiste or emolument whatsoever; we further give and grant power and authority to the said Commissioners as aforesaid, to take into their consideration the present state of the establishment, attached to the Court of Requests, and order them to report to us for our approbation what establishment may be necessary in future.

We do hereby further order and direct, that upon the said fifteenth day of April, the present Clerk of the Court of Requests shall, in open Court, hand over and deliver to the Commissioners hereby appointed, all papers, records and muniments, now belonging to the Court of Requests, or which appertain or relate thereto, and the said Commissioners shall have, and we do hereby give and grant to them, full power and authority to proceed in, hear and determine all and all manner of actions, suits and controversies, which now are or which then may be depending and undetermined in the same manner, as the same might have, by law, been heard and determined by the now existing Court of Requests; and we hereby strictly command and forbid all and all manner of persons, from insulting, affronting or abusing the said Commissioners, or any of them, their officers, or ministers, in the execution of their duty, and do strictly command all magistrates, bailiffs, and other officers of Justice, to be aiding and assisting to them in the execution of their office; and lastly we do order, that this our proclamation be published as the law directs, reserving to ourselves and our successors all and all such power as by law we have or may exercise, in altering, amending, abridging or enlarging these presents.

By order of the Hon'ble the Vice President in Council,

(Signed) J. LUMSDEN,

Chief Secretary to the Government.

Table of the Fees that are from and after the 15th day of April, 1802, to be paid by the suitors in the Court of Requests.

On all	where the cause of action shall not exceed 20 Sa. Rs.		where it shall exceed 20 and not exceed 40 Sa. Rs.		where it shall exceed 40 and not exceed 60 Sa. Rs.		where it shall exceed 60 and not exceed 80 Sa. Rs.		and where it shall exceed 80 and not exceed 100 Sa. Rs.	
Decrees	2	0	3	15	5	4	6	9	7	14
Causes dismissed .	1	12	3	6	4	8	5	10	6	12
Nonsuits . . .	1	12	3	6	4	8	5	10	6	12
Causes Compromised	1	0	1	14	2	7	3	0	3	10

	Rs.	As.	P.
That upon all warrants, there shall be paid a fee of	0	14	0
Upon all attachments, a fee of	1	0	0
Upon all subpœnas, a fee of	0	5	0
And for each time a cause is postponed by the parties there shall be paid a fee of	0	6	0
N. B.—To be paid by the party desiring it to be postponed, and, over and above the before mentioned fees, there shall be paid by the plaintiff for issuing each summons, where the sum in demand shall exceed 40 rupees, and at the time of its issuing a fee of	0	4	0

Not to be added to the defendants costs.

The same commission to be paid by the suitors as is now paid to the Clerk of the present Court of Requests.

By order of the Honorable the Vice President in Council.

(Signed) J. LUMSDEN,

Chief Secretary to the Government

PROCLAMATION

Extending the jurisdiction of the Courts of Commissioners for the recovery of small Debts.

FORT WILLIAM, SEPTEMBER 25TH, 1813.

By the Right Honorable Gilbert, Earl of Minto, Governor General for the Presidency of Fort William in Bengal in Council.

PROCLAMATION.

Recites the Statute 39 and 40 Geo. 3, c. 79, and recites the former proclamation and proceeds as follows :

And whereas, We, the Right Honorable Gilbert, Earl of Minto, Governor General of, and for the presidency of Fort William in Bengal in Council, have taken into our serious consideration, the great advantages which will result to the community by increasing the amount in value, to which the jurisdiction of the said Court shall in future extend, and by limiting the duration of the imprisonment of such defendants and debtors, against whom any execution, process of contempt, or precept in the nature of an execution, for the non-payment of such debts, costs and fees, sum or sums as by the judgments, decrees, or orders of the said Court, such debtor or defendant, is, or shall be adjudged, decreed, ordered or directed to pay, and that the following orders in respect thereof, are conformable to the intention of the legislative, and by the provisions made in like cases in England; Now we, having maturely considered the premises, do by these our proclamation, and in pursuance of the powers in us vested by the hereinbefore mentioned act, order and direct, that from and after the first day of October next, ensuing, the making and publishing of this our proclamation, the jurisdiction of the said Court, and the commission thereof shall extend, and the same is hereby extended, to the sum of two hundred and fifty sicca rupees, and no more; and we do hereby further order and direct, that from and after the said first day of October last, aforesaid, no person whatever, being a debtor or defendant, who shall be taken and confined in gaol, under any execution, process of contempt, or precept in the nature of an execution, issuing out of, or from the said Court, shall, where he or she shall be minded, and desirous *bona fide*, to give up his, or her whole effects, to his or her creditors, and the debts and costs and fees do not exceed thirty rupees, be kept or continued in custody, on any pretence whatsoever, more than four months from the time he or she shall have been ordered diet money, and where the said debt and costs and fees do not exceed sicca rupees sixty, be kept in custody on any pretence whatsoever, more than six months from the time of his or her having been ordered diet money as aforesaid, and where the debt and costs and fees do not exceed sicca rupees one hundred, be kept or continued in custody, on any pretence whatsoever, more than eight months from the time of his or her having been ordered diet money as aforesaid, and that from and after the first day of October, in person whatsoever, being a debtor or defendant, who shall be taken and confined in gaol, under any execution, process of contempt, or precept, in the nature of an execution, ssuing out of, or from the said Court, shall for any debt, costs, or fees above the sum of sicca rupees one hundred, and where he or she shall be mided, and desirous *bona fide*, to give up his or her whole effects to his or her creditors, be kept or continued in custody, on any pretence whatsoever

more than twelve months from the time of his, her or their having been ordered their diet money, as aforesaid.

By order of the Right Honorable the Governor General in Council.

(Signed) G. DOWDESWELL,

Chief Secretary to Government.

Table of the Fees that are from and after the 1st day of Oct. 1813, to be paid by the suitors in the Court of Requests.

On all	where the cause of action shall not exceed 20 Sa. Rs.		where it shall exceed 20 & not exceed 40 Sa. Rs.		where it shall exceed 40 and not exceed 60 Sa. Rs.		where it shall exceed 60 & not exceed 80 Sa. Rs.		where it shall exceed 80 & not exceed 100 Sa. Rs.		where it shall exceed 100 & not exceed 150 Sa. Rs.		where it shall not exceed 150 and not exceed 200 Sa. Rs.		and where it shall exceed 200 not exceed 250 Sa. Rs.	
	rs.	as.	rs.	as.	rs.	as.	rs.	as.	rs.	as.	rs.	as.	rs.	as.	rs.	as.
Decree	2	0	3	15	5	4	6	9	7	14	12	0	16	0	20	0
Cause dismissed . .	1	12	3	6	4	8	5	10	6	12	8	0	10	0	12	0
Nonsuits	1	12	3	6	4	8	5	10	6	12	8	0	10	0	12	0
Causes compromised	1	0	1	14	2	7	3	0	3	10	6	0	8	0	10	0

	Rs.	As.
That upon all warrants, there shall be paid a fee of .	0	14
Upon all attachments, a fee of	1	0
Upon all subpœnas, a fee of	0	5
And for each time a cause is postponed by the parties, there shall be paid a fee of	0	6
N. B. To be paid by the party desiring it to be postponed, and, over and above the before mentioned fee, there shall be paid by the plaintiff for issuing each summons, where the sum in demand shall exceed 40 rupees, and at the time of its issuing a fee of	0	4

Not to be added to the defendant's costs.

The same commission to be paid by the suitors, as is now paid to the Clerk of the present Court of Requests.

By order of the Right Honorable the Governor General in Council.

(Signed) G. DOWDSWELL,

Chief Secretary to Government.

PROCLAMATION

Extending the jurisdiction of the Court of Commissioners for the recovery of small Debts.

FORT WILLIAM, OCTOBER 29TH, 1819.

By His Excellency the Most Noble Francis, Marquis of Hastings, Governor General in, and for the Presidency of, Fort William in Bengal in Council.

PROCLAMATION.

Recites the Statute 39 and 40 Geo. 3, c. 79, and recites the two former proclamations and proceeds as follows:

AND WHEREAS, We, the Most Noble Francis, Marquis of Hastings, Knight of the Most Noble order of the Garter and of the Bath, Governor General in and for the Presidency of Fort William in Bengal in Council, have taken into our serious consideration, the advantages which have resulted to the community, from the establishment of the said Court, and from the extension of the jurisdiction thereof, as aforesaid, and that it would be for the benefit of the public, still further to enlarge the jurisdiction of the said Court, to the utmost extent in amount, to which by law the same can be extended, and being desirous to provide further means for dispatching the additional business, to which such extension of the jurisdiction and the encreasing trade and population of the city of Calcutta will give rise, and that it is expedient to render summonses, issued from the said Court, which by the first mentioned proclamation, are returnable on particular days, in future returnable on such days as the Commissioners of the said Court may judge most convenient for the dispatch of business, and to alter the rules of fees and commission now levied on suitors in the said Court, in such manner as that such rules shall bear a better proportion than at present, to the sums sued for, and hold out stronger inducements to the parties to come to an amicable arrangement respecting the matters in dispute between them, instead of litigating such matters in Court, and also to make provision for regulating the period of imprisonment and the allowance of diet to debtors, confined in execution under the judgments of the said Court. Now we, having maturely considered the premises, do by this our proclamation, and in pursuance of the power in us vested, by the hereinbefore mentioned act, order and direct, that from and after the first day of December next, ensuing, the making and publishing of this our proclamation, the jurisdiction of the said Court, and the commissions thereof,

shall extend, and the same is hereby extended, to the sum of four hundred sicca rupees and no more; And we do hereby further order and direct, that from and after the said first day of December next, aforesaid, the said Court shall be composed of four Commissioners, who shall and may hold and exercise all powers and authorities heretofore or hereby granted to, and exercised by, or which by law may be granted and exercised by the said Court of Commissioners, to make or cause to be made, such act or acts, order or orders, decrees, judgments and proceedings, and to issue such process in all and all manner of action, plaints, suits and controversies, for any debts, duties or demands, that shall be then pending or which not exceeding the said value or amount of sicca rupees four hundred, may after the said first day of December, be brought before the said Court, as they may find to stand with equity and good conscience, in as full and ample a manner as the same powers and authorities have been hitherto, or are now held and exercised by the said Court of Commissioners, to the amount in value of sicca rupees two hundred and fifty, subject only to such alterations and modifications as we make by this our proclamation, or in as far as the same may be altered by any rules or orders, which it may be found expedient by us or our successors, to make for the future Government of the said Court; and we do further order and adjudge, that when upon the trial and hearing of any matter or thing by the said Court, the Commissioners present shall be equally divided in opinion, the vote of the senior Commissioner present shall decide. And we do hereby further order, that summonses be made returnable on such days as the said Commissioners may lawfully, from time to time direct, that if possible the list of causes appointed for trial on any one day, may not be so numerous that the whole cannot be heard within seasonable hours on that day, and whereas the provisions respecting the periods of imprisonment and the allowances of diet money in the said recited proclamation require to be altered and modified. We do hereby order and direct, that in all cases in which any judgment shall have been heretofore given, or shall be given in the said Court of Requests, for any sum not exceeding sicca rupees ten, including costs, the person of the debtor shall not be liable to be detained in prison, for a longer period than one month, and where the debt and costs shall not exceed fifty rupees, longer than four months, and where the debt and costs shall not exceed two hundred rupees, longer than eight months, and where the debt and costs shall exceed 200 rupees, longer than one year. Provided always, that in every case in which the creditor shall take out and put in force, execution against the body of his debtor, such creditor shall, within three days after the debtor shall be lodged or detained in the gaol of the said Court at his suit, deposit with the keeper of the said gaol or his deputy, diet money for one month, at the rate of one anna and a half per diem, and shall continue to pay and deposit

with such keeper or his deputy, diet money for one month in advance at the rate aforesaid, during the period for which such debtor may be detained in prison at the suit of such creditor, that is to say, within the last three days of the first and every succeeding month, during which such debtor shall be detained at the suit of such creditor, and in cases where such debtor shall have been lodged or detained in execution at the suit of any creditor, before the 1st of December next, ensuing, the advance for diet money shall be made and deposited as beforesaid, within the space of one month, from and after the 1st December next, ensuing, and so within the last three days of the next and following months, during which such debtor shall be detained at the suit of any such creditor, and in failure of such payment and deposit within the respective periods, and in manner aforesaid, it shall be lawful for the debtor so confined, to apply to the said Court, and upon certificate of the gaoler or his deputy, that such payment and deposit of diet money has not been made in manner and within the periods aforesaid, the said Court shall forthwith make an order for the discharge of such debtor from confinement, at the suit of such creditor so failing; and provided also, that whenever any debtor detained in execution for any debt and costs recoverd against him, shall be minded to give up the whole of his estate and effects in satisfaction of such debt and costs, it shall be lawful for the said Court upon such debtor so doing to reduce the respective periods of imprisonment before-mentioned, in proportion to the value of such estate and effects compared with the amount of the debt and costs, in case such estate and effects shall not be sufficient to pay and discharge the same, or if sufficient to discharge such debtor. And also in all cases in which any person in execution for any debt and costs as aforesaid shall offer good and reasonable security for the payment of such debt and costs by instalments, it shall be lawful for the said Court to order such debtor after he shall have given such security, to be discharged from confinement as to such debt and cost. But in all cases in which such debtor being in execution as aforesaid, shall be discharged from confinement before full payment of the debt and costs, the property then belonging to or afterwards acquired by such debtor, shall be liable to be taken in execution for the debt and costs or any part thereof remaining due, and also for the amount of such diet money as shall have been paid and advanced by such creditor. And we hereby further direct and order, that the said Court as constituted and declared by the present, and the said proclamations above recited, and all proceedings of the said Court shall be, and they are thereby declared to be, subject to the controul of his Majesty's Supreme Court at Fort William, in Bengal, in as full and ample manner to all intents and purposes as the said Court of Requests, as formerly constituted by the said, recited proclamations by law, was subject to the controul of the said Supreme Court, before the making of the provisions and

regulations herein contained; and we do hereby further order and direct, that in all suits instituted in the said Court of Commissioners, from and after the said first day of December next, there shall be received and taken from the suitors in the said Court, the fees, payments and commission set forth in the schedule, herunto annexed and no more. And lastly we do order that this our proclamation be published as the law directs, reserving to ourselves and our successors all such power as by law, we have or may exercise of altering, amending, abridging or enlarging these presents, and the subsisting rules and regulations of the said Court of Requests.

By order of the Most Noble the Governor General in Council.

(Signed) W. B. BAYLEY,

Chief Secretary to Government.

TABLE OF COSTS

On causes for ten rupees and under	Rs.	As.	P.
If compromised	0	2	0
If nonsuited	0	3	0
On judgments, whether for plaintiff or defendant	0	4	0
Subpœnas, each	0	4	0
Attachments on warrants in execution, each	0	8	0
And for each time a cause is postponed by the parties, there shall be paid a fee of	0	2	0

N. B, To be paid by the party desiring it to be postponed no commission to be charged on this class of causes.

On causes above ten rupees.

On all Causes.	*From Sa. Rs. 10 to Sa. Rs. 40.*		*40 to 80*		*80 to 150*		*150 to 300*		*300 to 400*	
If compromised	1	0	3	0	4	0	8	0	10	0
If nonsuited	1	8	4	0	6	0	10	0	12	0
On judgments whether for plaintiff or defendant	2	0	6	0	8	0	16	0	20	0
Subpœnas each	0	4	0	8	0	8	1	0	1	0
Attachments or warrants in execution	0	8	1	0	1	0	2	0	2	0
And for each time a cause is postponed by the parties there shall be paid a fee of *	0	4	0	8	1	0	2	0	3	0

* N.B To be paid by the party desiring it to be postponed, five per cent. commission on all causes compromised before called on for trial, and ten per cent. on all other causes, exclusive of the abovementioned fees.

(Signed) W. B. BAYLEY, *Chief Secy. to Govt.*

COMMISSION OF THE PEACE

For the Provinces and Presidency of Fort William in Bengal.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith. To our trusty and well beloved James Pattle, Esq., &c. &c., respectively, covenanted servants of the East India Company, or British inhabitants of the Presidency of Fort William in Bengal, or of the provinces, districts and countries of Bengal, Behar and Orissa, or of the places subordinate to the said presidency of Fort William in Bengal, or of some, or one of them, greeting. Whereas, by an Act of Parliament, made and passed in the *thirty-third* year of the reign of his late Majesty, George the *Third*, entituled "*An act for continuing in the East India Company, for a further term, the possession of the* British territories in India, *together with their exclusive trade under certain limitations, for establishing further regulations for the Government of the said territories, and the better administration of Justice within the same, for appropriating to certain uses, the revenues and profits of the said Company, and for making provision, for the good order and government of the towns of* Calcutta, Madras, and Bombay," after reciting, "that the "Governor General and the other members of the Supreme "Council of Fort William in Bengal, and the Chief Justice and "other Justices of the Supreme Court of Judicature at Fort "William aforesaid, were at the time of passing the said act, "the only persons authorized by law to act as Justices of the "Peace, within and throughout the provinces, districts, and "countries of Bengal, Behar, and Orissa, and the Governor or "President, and the other members of the Council of Fort St. "George, on the coast of Coromandel, and the Governor or "President, and the other members of the Council of Bombay, "were the only persons authorized by law to act as Justices of "the Peace, in and for the Presidency of Fort St. George, and "the presidency, island, town, and factory of Bombay, and the "places belonging, and subordinate to the said last mentioned "two presidencies respectively, and that for preserving and main-"taining the peace in the said provinces and presidencies afore-"said, and the places subordinate thereto, it was expedient, that "a further number of persons should be appointed to act as "Justices of the Peace, in and for the same respectively." It was and is amongst other things enacted, that it shall, and may be lawful to and for the Governor General in Council of Fort William in Bengal for the time being, by commission, to be, from time to time, issued under the seal of our Supreme Court of Judicature, there in the name of us, our heirs and successors, tested in the name of the Chief Justice of our said Court, (which said

commission, our said Supreme Court of Judicature is, by the said act authorized and required, from time to time, by any order or warrant from the said Governor General in Council to issue accordingly,) to nominate and appoint such and so many of the covenanted servants of the said Company or other British inhabitants, as the said Governor General in Council shall think properly qualified to act as Justices of the Peace, within and for the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the said presidency of Fort William in Bengal, and places thereto subordinate, and that such persons shall according to the tenor of the respective commissions, wherein they shall be so nominated and appointed, and by virtue thereof, and of the said act, have full power and authority to act as Justices of the Peace according to the tenor of the same commissions, wherein they shall be respectively named, in and for the provinces of Bengal, Behar, and Orissa aforesaid, and within and for the presidency of Fort William in Bengal aforesaid, and places subordinate thereto. And whereas, by a certain other Act of Parliament, made and passed in the year of our Lord, one thousand eight hundred and thirty three, and in the *third* and *fourth* year of the reign of his late Majesty, William the *Fourth*, intituled "*An act for effecting an arrangement with the East India Company, and for the better Governmeet of his Majesty's India territories, till the thirtieth day of April, one thousand eight hundred and fifty four.*" "It was amongst other things enacted, that the territories then subject to the Government of the presidency of Fort William in Bengal, should be divided into two distinct presidencies, one of such presidencies in which should be included Fort William aforesaid, to be styled the presidency of Fort William in Bengal, and the other of such presidencies to be styled the presidency of Agra, and that the executive government of each of the presidencies of Fort William in Bengal and Agra, should be administered by a Governor and three Councillors, to be styled the Governor in Council of the presidency of Fort William in Bengal and Agra respectively, and it was thereby further enacted, that it should and might be lawful for the Court of Directors in the said act mentioned, under such controul as is by the said act provided, to revoke and suspend so often and for such periods as the said Court should in that behalf direct, the appointment of Council in all or any of the presidencies in the said act mentioed. And whereas, under the authority of the said act, the said Court of Directors have suspended the appointment of Counsellors of the said Presidency of Fort William in Bengal; And whereas by a certain other act of Parliament, made and passed in the year of our Lord, one thousand eight hundred and thirty five, and in the *fifth* year of the reign of his late Majesty William the *Fourth*, intituled "*An act to authorise the Court of Directors*

of the East India Company, to suspend the execution of the provisions of the act of the third and fourth, William the Fourth, chapter, eighty-fifth, so far as they relate to the execution of the Government of Agra;" after reciting the said act, and that much diffiulty had arisen in carrying such enactment into effect, and that the same would be attended with a large increase of charge, It was enacted, that it should and might be lawful for the Court of Directors of the East India Company, under the direction and Control of the Board of Commissioners for the affairs of India, to suspend the execution of the provisions of the said in part recited act, so far as the same relate to the divisions of the said territories into two distinct presidencies, and to the measures consequent thereupon for such time, and from time to time as the said Court of Directors, under the direction and Control of the said Board of Commissioners should think fit; And whereas, under the authority of the said last recited act, the Court of Directors of the East India Company, under the direction and control of the Board of Commissioners for the affairs of India, have suspended the execution of the said provisions of the said act of the *third* and *fourth*, of William the *Fourth*, so far as the same relate to the division of the said territories into two distinct presidencies, and to the measures consequent thereupon: And whereas our trusty and well beloved the Honorable Alexander Ross, Esquire, Deputy Governor of the Presidency of Fort William in Bengal, has, as such Deputy Governor of the Presidency of Fort William in Bengal, by virtue of, and in pursuance of the said several acts of Parliament, duly made his certain order, or warrant, bearing date the seventeenth day of April, in the year of our Lord one thousand eight hundred and thirty eight, and to our Chief Justice and other our Justices of the said Supreme Court directed, for issuing a commission of the peace, nominating and appointing you to act as Justices of the Peace, within and for the said provinces, districts and countries of Bengal, Behar and Orissia, and within and for the said presidency of Fort William in Bengal, and places thereto surbordinate, according to all the powers and provisions of the said act, and the true meaning and construction thereof. Now know ye, that we have accordingly assigned you, jointly and severally, and every one of you, our Justices, to keep our peace within and for the said provinces, districts or countries of Bengal, Behar and Orissa, and within and for the said presidency of Fort William in Bengal, and places thereto subordinate; and to keep and cause to be kept all ordinances and statutes, made for the good of our peace and for the conservation of the same, and for the quiet rule and government of our subjects and people, in all and every the articles thereof, and within the said provinces, districts and countries of Bengal, Behar and Orissa, and within and for the said presidency of Fort William in Bengal, and places thereto subordinate as well within liberties as without, according to the force, form, and

effect of the same, and to chastise and punish all persons offending against the form of those ordinances or statutes, or any or either of them within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, as according to the form of those ordinances and statutes, or any of them shall be fit to be done, and to cause to come before you or any of you, all those persons, who shall have used threats to any one or more of our people touching their bodies or persons, or the burning or firing their houses, to find sufficient security for the peace or for their good behaviour towards us and our people, and if they shall refuse to find such security, then to cause them to be kept safe in some of the prisons of the said provinces, districts, and countries of Bengal, Behar, and Orissa, or of the said presidency of Fort William in Bengal, or places thereto subordinate, until they shall find such security; And further to do and cause to be done, all other acts to the office of Justice of the Peace appertaining, which under and by virtue of the said statute or by virtue of any other law or statute now in force, may lawfully be done by any Justice or Justices of the Peace within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal, and places thereto subordinate, and therefore we command you diligently to apply yourselves to the keeping of our peace, ordinances, and statutes, and all and singular other the premises, and to perform and fulfil the same in form aforesaid, doing therein that which to Justice appertaineth according to our laws and statutes, saving to us the things to us in respect thereof belonging. Witness Sir Edward Ryan, Knight, Chief Justice of our said Court, the eighteenth day of April, in the year of our Lord, one thousand eight hundred and thirty-eight, and in the first year of our reign.

COMMISSION OF THE PEACE

For the Town of Calcutta.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To our trusty and well beloved Rajah Radakaunt Deb, Behadoor, and Baboo Dwarkanauth Tagore, persons respectively resident within the province of Bengal, and not being the subjects of any foreign state.

Recites the Statute 33 G. 3, c. 52, as in the former Commission, and proceeds as follows:

Whereas, by a certain other Act of Parliament, made and passed in the year of our Lord, one thousand eight hundred and thirty-two, and in the *second* and *third* reign of his late Majesty, King *William* the *Faurth*, and entituled "*An Act to amend the law relating to the appointment of Justices of the Peace and of Juries, in the East Indies*;" reciting amongst other things, that it was expedient, that other persons besides the covenanted servants of the United Company of Merchants of England, trading to the East Indies, or other British inhabitants of the East Indies, should be capable of being appointed to the office of Justice of the Peace, within and for the towns of Calcutta, Madras and Bombay, It was and is amongst other things enacted, that in the manner prescribed by law for the nomination and appointment of persons, then eligible to the office of Justce of the Peace, in the territories in the possession, and under the Government of the said Company, and subject except as to the taking of any oaths to the provisions of the law, which relate to the said office, it shall and may be lawful for the Governor General in Council of Fort William in Bengal, the Governor in Council of Fort St. George, and the Governor in Council of Bombay respectively, for the time being, to nominate and appoint in the name of the King's Majesty, his heirs, and successors, and persons resident within the terriories therein aforesaid, and not being the subjects of any foreign state, whom the said Governor General in Council, and Governors in Council respectively, shall think properly qualified, and who will bind themselves by such oaths or solemn affirmations as may, from time to time, be prescribed in that behalf, by the said Governor General in Council and Governors in Council respectively, to act within and for the towns of Calcutta, Madras and Bombay respectively, as Justices of the Peace, and that the persons so to be nominated and appointed to act as Justices of the Peace, within and for the towns aforesaid, shall have full power and authority to act as such Justices of the Peace, but according only to the terms of the respective commission wherein such persons shall be so nominated and appointed. And whereas by a certain other act of Parliament, made and passed in the year of our Lord, one thousand eight hundred and thirty-three, and in the *third* and *fourth* year of the reign of his late Majesty, King William the *Fourth*, entituled "*An Act for effecting an arrangement with the East India Company, and for the better Government of his Majesty's Indian territories, till the thirtieth day of April, one thausand eight hundred and fifty-four.*" It was amongst other things enacted, that the executive Government of the presidency of Fort William in Bengal, should be administered by a Governor and three Counsellers to be styled the Governor in Council of the presidency of Fort William in Bengal, and it was thereby further enacted, that it should and might be lawful for the Court of Directors in the said act mentioned under such controul, as is by the said act

provided. to revoke and suspend so often, and for such periods as the said Court should, in that behalf direct, the appointment of Council, in all or any of the presidencies in the said act mentioned. And, whereas under the authority of the said act, the said Court of Directors have suspended the appointment of Councillors of the said presidency of Fort William in Bengal; And whereas our trusty and well beloved, the Honorable Alexander Ross, Esq., Deputy Governor of the presidency of Fort William in Bengal, has as such Deputy Governor of the Presidency of Fort William in Bengal, by virtue of and in pursuance of the said several acts of Parliament, duly made his certain order or warrant, bearing date the seventeenth day of April, in the year of our Lord, one thousand eight hundred and thirty eight, and to our Chief Justice and other our Justices, of the said Supreme Court directed, for issuing a Commission of the Peace, nominating and appointing you to act as Justices of the Peace, within and for the town of Calcutta, according to all the powers and provisions of the said several acts for the appointment of such Justices of the Peace, and the true meaning and construction thereof. Now. know ye, that we have accordingly assigned you, jointly and severally, and each of you our Justices, to keep our peace within and for the said town of Calcutta, and to keep and cause to be kept all ordinances and statutes made for the good of our peace, and for the conservation of the same, and for the quiet rule and government of our subjects, and people in all and every the articles thereof, within the said town of Calcutta, according to the force, form, and effect of the same, and to chastise and punish all persons offending against the form of those ordinances or statutes, or any or either of them within the said town of Calcutta, according to the form of those ordinances and statutes, or any of them shall be fit to be done and to cause to come, before you or either of you, all those persons who shall have used threats to any one or more of our people touching their bodies or persons, or burning or firing their houses to find sufficient security for the peace or for their good behaviour towards us and our people, and if they shall refuse to find such security, then to cause them to be kept safe in some of the prisons of the said town of Calcutta, until they shall find such security, and further to do and cause to be done all other acts to the office of Justice of the Peace appertaining, which under and by virtue of the said statutes, or by virtue of any other law or statutes, now in force, may lawfully be done by any Justice or Justices of the Peace, within the said town of Calcutta, and therefore, we command you diligently to apply yourselves to the keeping of our peace, ordinances and statutes, and all and singular other the premises, and to perform and fulfil the same, in form aforesaid, doing therein that which to justice appertaineth according to our laws and statutes, saving to us the things to us in respect thereof belonging. Witness, Sir

of the East India Company, to suspend the execution of the provisions of the act of the third and fourth, William the Fourth, chapter eighty-fifth, so far as they relate to the execution of the Government of Agra ;" after reciting the said act, and that much difficulty had arisen in carrying such enactment into effect, and that the same would be attended with a large increase of charge, It was enacted, that it should and might be lawful for the Court of Directors of the East India Company, under the direction and Control of the Board of Commissioners for the affairs of India, to suspend the execution of the provisions of the said in part recited act, so far as the same relate to the divisions of the said territories into two distinct presidencies, and to the measures consequent thereupon for such time, and from time to time as the said Court of Directors, under the direction and Control of the said Board of Commissioners should think fit; And whereas, under the authority of the said last recited act, the Court of Directors of the East India Company, under the direction and control of the Board of Commissioners for the affairs of India, have suspended the execution of the said provisions of the said act of the *third* and *fourth*, of William the *Fourth*, so far as the same relate to the division of the said territories into two distinct presidencies, and to the measures consequent thereupon. And whereas our trusty and well beloved the Honorable Alexander Ross, Esquire, Deputy Governor of the Presidency of Fort William in Bengal, has, as such Deputy Governor of the Presidency of Fort William in Bengal, by virtue of, and in pursuance of the said several acts of Parliament, duly made his certain order, or warrant, bearing date the seventeenth day of April, in the year of our Lord oue thousand eight hundred and thirty eight, and to our Chief Justice and other our Justices of the said Supreme Court directed, for issuing a commission of the peace, nominating and appointing you to act as Justices of the Peace, within and for the said provinces, districts and countries of Bengal, Behar and Orissia, and within and for the said presidency of Fort William in Bengal, and places thereto surbordinate, according to all the powers and provisions of the said act, and the true meaning and construction thereof. Now know ye, that we have accordingly assigned you, jointly and severally, and every one of you, our Justices, to keep our peace within and for the said provinces, districts or countries of Bengal, Behar and Orissa, and within and for the said presidency of Fort William in Bengal, and places thereto subordinate; and to keep and cause to be kept all ordinances and statutes, made for the good of our peace and for the conservation of the same, and for the quiet rule and government of our subjects and people, in all and every the articles thereof, and within the said provinces, districts and countries of Bengal, Behar and Orissa, and within and for the said presidency of Fort William in Bengal, and places thereto subordinate as well within liberties as without, according to the force, form, and

effect of the same, and to chastise and punish all persons offending against the form of those ordinances or statutes, or any or either of them within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and within and for the presidency of Fort William in Bengal, and places thereto subordinate, as according to the form of those ordinances and statutes, or any of them shall be fit to be done, and to cause to come before your or any of you, all those persons, who shall have used threats to any one or more of our people touching their bodies or persons, or the burning or firing their houses, to find sufficient security for the peace or for their good behaviour towards us and our people, and if they shall refuse to find such security, then to cause them to be kept safe in some of the prisons of the said provinces, districts, and countries of Bengal, Behar, and Orissa, or of the said presidency of Fort William in Bengal, or places thereto subordinate, until they shall find such security; And further to do and cause to be done, all other acts to the office of Justice of the Peace appertaining, which under and by virtue of the said statute or by virtue of any other law or statute now in force, may lawfully be done by any Justice or Justices of the Peace within the said provinces, districts, and countries of Bengal, Behar, and Orissa, and the said presidency of Fort William in Bengal, and places thereto subordinate, and therefore we command you diligently to apply yourselves to the keeping of our peace, ordinances, and statutes, and all and singular other the premises, and to perform and fulfil the same in form aforesaid, doing therein that which to Justice appertaineth according to our laws and statutes, saving to us the things to us in respect thereof belonging. Witness Sir Edward Ryan, Knight, Chief Justice of our said Court, the eighteenth day of April, in the year of our Lord, one thousand eight hundred and thirty-eight, and in the first year of our reign.

COMMISSION OF THE PEACE

For the Town of Calcutta.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith: To our trusty and well beloved Rajah Radakaunt Deb, Behadoor, and Baboo Dwarkanauth Tagore, persons respectively resident within the province of Bengal, and not being the subjects of any foreign state,

Recites the Statute 33 G. 3, c. 52, as in the former Commission, and proceeds as follows:

enttitled to relief under this act. And in order to provide against traders (who, if in England, would be subject to the Bankrupt Laws,), absconding to Serampore or other places, and setting their creditors at defiance; Mr. Wynn introduced a clause making the departing of such a trader from the jurisdiction with the intent to defeat or delay his creditors, an act of insolvency, and authorised the Court, upon the petition of creditors, to a certain amount, to treat the party escaping as an insolvent debtor, and to assign his property for the benefit of his creditors.

There are other provisions in this act, the intention of which is, to secure a more equal distribution of the effects of a debtor. In 1822, a statute was passed in England, for preventing frauds upon creditors. The preamble recites, "that injustice is frequently done to creditors by secret warrants of attorney to confess judgment, for securing the payment of money, whereby persons in a state of insolvency, are enabled to keep up the appearance of being in good circumstances, and persons holding such warrants of attorney, have the power of taking the property of such insolvents in execution at any time, to the exclusion of the rest of their creditors." To prevent such injustice, (and I am informed that instances have occurred here, of creditors, by means of such warrants, sweeping away all the effects of their debtors to the exclusion of the other creditors,) provisions similar to those contained in the English statute of 1822, have been introduced. Every warrant of attorney to confess judgment, and every *cognovit actionem*, executed after the first of last March, is to be deemed fraudulent, and null and void, to all intents and purposes, unless filed with the Prothonotary of this Court, within six weeks after the time of execution, accompanied by an affidavit of the time of its execution. The Prothonotary is directed to enter in a book, to be kept for that purpose, an alphabetical list of all warrants of attorney, and of every *cognovit actionem* filed in his office, which book, as well as the warrant or cognovit, may be searched and viewed at all convenient times.

I will trouble you, Gentlemen, no further with observations on this statute. I sincerely trust it will, on experience, be found to effect all the objects for which it is intended, and to have placed the laws relating to debtor and creditor, on a more secure and wholesome foundation.

I would now call your attention to the act for improving the administration of criminal justice.

You are doubtless aware, that the state of the criminal law of England has, of late years, undergone much discussion in Parliament, and that the result has been the carrying into effect various measures for the simplification and amendment of this branch of the law. At the time Mr. Peel introduced his bill

into the House of Commons, for the consolidation of the statute law of England relating to theft, the number of statutes relating to that offence then in force, amounted to *ninety-two*, commencing with the reign of Henry the Third, and concluding with the sixth of the present King. In one act are now contained all the provisions of the statute law of England, relating to the offence of larceny, and also of other offences connected with it.*

Mr. Peel has also consolidated and amended the laws relating to malicious injuries committed on property † and has obtained the sanction of Parliament to two other acts,‡ the objects of which are, to regulate, in some respects, the proceedings connected with the administration of the law in the various stages of a criminal prosecution. The effect of these enactments is to remove from the Statute Book, nearly *one hundred and thirty statutes.*§

During the last Sessions of Parliament, Lord Lansdowne introduced into the House of Lords a bill to consolidate and amend the statutes relating to offences against the person.|| At the time this bill was introduced, there was *fifty-seven* statutes, relating to this subject in force in England, commencing with the reign of Henry the Third, and terminating in that of his present Majesty. The whole of the statute law of England, relating to offences against the person, is now comprised in one short act of *fourteen* pages; and the *fifty-seven* statutes abovementioned, are repealed: Lord Lansdowne, in the same Sessions, introduced another bill, which has also passed into a law; the purpose of which is to amend the law of evidence as applicable to criminal cases.¶

None, however, of these statues, introduced by Mr. Peel or Lord Lansdowne, extended to this country.

From a construction which former Judges of this Court have put upon the act of the thirteenth of Geo. III. and the King's charter, it has been considered, that the inhabitants of Calcutta are not entitled to the benefit of the statute law of England, to a later period than the thirteenth of Geo. I., unless expressly named in statutes passed since that time. From this construction of the charter, founded on technical rules of law, with which I will not trouble you, it has followed that many important and salutary acts relating to the administration of criminal justice passed in England since that period, have been held not

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* 7 and 8 G. 4, c. 29. † 7 and 8 G. 4, c. 30.

‡ 7 G. 4, c. 64. and 7 and 8. G. 4, c 28.

§ Most of these are repealed by the 7 and 8. G. 4, c. 27. expressly passed for that purpose. || 9. G. 4, c. 31. ¶ 9. G. 4, c. 32.

to apply to this country. Much of the inconvenience and inconsistency which such a state of things produced; has, I am happy to say, as far as regards the criminal law, been remedied by the present act, and fortunately the remedy has been applied at a time, when Mr. Wynn was enabled to avail himself of the improvement introduced into the criminal law of England, by Mr. Peel and Lord Lansdowne.

Mr. Wynn has adopted the same plan of consolidating the statutes relating to this branch of the law, that has been pursued in England. The statutes repealed by the acts of Lord Lansdowne and Mr. Peel, are also repealed within the jurisdiction of the King's Courts in India, and as far as the circumstances of the case will admit, the criminal law to be administered in the King's Courts in India, is, in all respects, the same as the criminal law of England.

It is to some of the provisions of this act, as altering or amending the law as it previously existed in this country, to which I am particularly anxious to call your attention.

I will first point out to you some of the alterations made in the power and duties of Justices of the Peace.

The power of Justices of the Peace to bail offenders, has been limited and restrained by various acts of Parliment. In most instances of felony they were prohibited from taking bail; though in all offences below felony, they ought to have admitted the offender to bail, unless prohibited from so doing by some special act of Parliament. The law has, in this respect, been materially altered, and the power of Justices much enlarged. Although to allow bail to be taken for enormous crimes might tend to defeat public justice, yet, on the other hand, it seemed unjust to imprison a person though accused of the greatest offence, if the evidence was such as neither to raise a strong presumption of guilt, or to warrant the dismissal of the charge altogether. This evil now appears to be provided against; if any person is taken before two Justices of the Peace, charged with felony, or on suspicion of felony, and the evidence given in support of the charge shall, in their opinion, not be such as to raise a strong presumption of the guilt of the person charged and require his committal: or such evidence shall be adduced on behalf of the person charged, as shall, in their opinion, weaken the presumption of his guilt, but notwithstanding there shall appear to them to be sufficient ground for judical enquiry; the person charged is to be admitted to bail. Within the local limits of the jurisdiction of this Court, this power can be only exercised by two Magistrates; beyond its local limits, one Justice of the Peace may either commit or admit the person charged to bail, in the manner there pointed out. Before, however, any person is admitted to bail or committed to prison for felony, or suspicion of felony, it is the duty of the Justice of

the Peace, to take his examination and the information, upon oath of those, who knew the facts and circumstances of the case, in writing; and if bailed, the bailment should also be certified in writing; which, together with the examination and information, should be delivered to the proper officer of the Court, where the trial is to take place.

The law had not provided for the taking of the examination of the witnesses and the defendant. In cases of misdemeanor, this act has made it obligatory on the Magistrate in all cases of misdemeanor to take the examination of the defendant and the witnesses, and to transmit them in the same manner as they are bound to do in cases of felony.

The duty of the Coroner upon an inquisition is, by this act, clearly defined and pointed out; and he, like the Justices of the Peace, is to return the depositions of witnesses, their recognizances, and the inquisition to the Court, where the trial is to take place.

The Magistrate or Coroner who fails to comply with the requisitions of the statute, in making their returns, is subject to be fined by the Court, where the trial is to take place.

It is desirable, that Justices of the Peace should be aware, that this act has given to them the power of summary conviction in several cases, and that it has pointed out specifically the mode of proceeding which they should adopt.

I will first refer to the different clauses which define the offences, of which persons may be summarily convicted, and next to the mode of proceeding, which the Justices must adopt. By the 7th section, it is enacted that persons having in their possession more than five pieces of counterfeit coin without lawful excuse, the proof, of which lies on the party accused, may be convicted before one Justice of the Peace, who may fine or imprison in the manner therein pointed out. By section 91, persons in possession of shipwrecked goods, of which they are not able to give a satisfactory account, may be convicted before a Justice of the Peace, and punished as that clause directs. By section 92, persons offering shipwrecked goods for sale, who cannot satisfy a Justice that they came lawfully by them, may be convicted and punished by one Justice of the Peace. By section 97, the stealing of dogs, or beasts, or birds, ordinarily kept in a state of confinement, and not being the subject of larceny at common law, is an offence of which a party being convicted before a Justice of the Peace, and for the first offence, shall forfeit over and above the value of the dog, beast or bird, such sum of money not exceeding two hundred rupees, as to the Justice shall seem meet; for a second offence of this description, the party offending, is liable to be committed to the gaol or house of correction, there to be kept to hard labour

for such term not exceeding twelve calendar months, as the convicting Justice shall think fit. By the 39th section, if any person shall aid, abet, counsel, or procure the commission of any offence which is by this act punishable on summary conviction, he is liable, on conviction before a Justice of the Peace, to the same forfeiture or punishment as the principal offender. By the 13th section, it is enacted, that where the stealing or taking of any property whatsoever is by this act punishable on summary conviction, any person who shall receive such property knowing the same to be unlawfully come by, is liable to be punished before a Justice of the Peace, in the same manner as the person originally stealing or taking such property.

In all cases of summary conviction under this act, the 41st section directs, that the prosecution shall be commenced within three calendar months, after the commission of the offence.

The 42d and 43d sections contain directions, as to the mode of compelling the appearance of persons punishable on summary conviction, and the manner in which the forfeiture and penalties arising from convictions shall be applied.

The 44th section applies only to summary convictions under this act, and regulates the period for which a Justice may commit a party to prison, who, after conviction, fails to pay the penalty imposed upon him.

The 45th and 46th sections are also limited to convictions under this act, allowing the Justice to discharge an offender from his conviction upon his making satisfaction to the party aggrieved ; and making a summary conviction under which a party has paid the penalty or suffered the imprisonments, a bar to any proceeding for the same crime.

The 48th section gives a form for conviction under this act.

It is to the three following sections, the 48th, 49th and 50th, I would particularly call your attention. The last of these, the 50th section, relates exclusively to convictions under this act, and it directs, " that every Justice of the Peace, before whom any persons shall be convicted of any offence against this act, shall transmit the conviction to the next Court of General or Quarter Sessions, there to be kept by the proper officer among the records of the Court ; and upon any indictment or information againt any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown."

I am fully aware, that it has not of late years been usual to hold any Court of General or Quarter Sessions, except for the

purposes of making Assessments on the owners or occupiers of houses, according to the provision of the 33d Geo. 3, c. 52. §. 158. I find however, from the minute book of the Sessions, that Courts of the description have been held by the Governor General and Members of Council; and that Grand Juries have been summoned and charged by the Chairman to enquire, though no persons appear to have been tried. I can have no doubt of the power of the Governor General and Council to hold a Court of Quarter Sessions. The Charter of 1753, expressly empowers the Governor or President of Fort William and the Council, for the time being, or any *three* or more of them to hold a Quarter Sessions of the Peace, four times in the year, and they are authorised to do all acts that Justices of the Peace in England may, under a Commission, from the Crown. By section 36 of the letters patent of 1774, the power given to the Governor and Council under this clause, to act as Commissioners of Oyer and Terminer was and is repealed, but their jurisdiction as a Court of Quarter Sessions is expressly recognised by the 21st section.

The 38th section of the 13th Geo. 3. c. 63, also expressly enacts, that the Governor General and Council are to have authority to act as Justices of the Peace, and to do all matters and things which appertain to that office, and are empowered to hold Quarter Sessions within the settlement of Fort William, four times in every year, and the same shall be at all times a Court of Record.

I know that it has been considered a question of some doubt and difficulty, whether any of the statutes enable Justices of the Peace, under Commissions from this Court, to hold a Court of Quarter Sessions, for any other purpose than those of making an assessment. I will not now enter into the difficulties, to which the various statutes relating to this subject, give rise.

I can only say, that whatever may be the inconvenience (which I should have thought would have been present to those who assisted in the framing of this act) it will be absolutely necessary that a Court of General or Quarter Sessions should be held, in order that the directions of this statute may be complied with. This necessity is the more apparent from the provisions of the 48th and 49th sections.

The 48th section provides, that in *all* cases (not limited to convictons under this act) where the sum adjudged to be paid on any summary conviction, shall exceed fifty sicca rupees; *or* the imprisonment adjudged shall exceed one calendar month; *or* the conviction shall take place before one Justice only; any person, who shall think himself aggrieved by any such conviction, may appeal to the next Court of General Quarter Sessions. The clause goes on to direct the notices, &c., which the party appealing shall give, and provides for his discharge if

in prison under the conviction, on his giving sureties to try the appeal. The Court at such Sessions is to hear and determine the matter of the appeal.

The 49th section provides, that no such conviction or adjudication made on appeal therefrom, shall be quashed for want of form; or removed by certiorari, or otherwise, into any of his Majesty's superior Courts of Record.

If the two sections to which I have just referred, are to be construed as applying only to convictions under this statute, there can be no doubt that a Court of Quarter Sessions should be regularly held, the necessity for which would be still more apparent if these sections are to be taken according to their literal meaning, without reference to the other clauses of the act which precede them. Whichever may be considered the right construction to be put on these sections, it is clear that the Charter, under which we act, expressly recognizes the Court of Quarter Sessions as instituted under the Charter of 1753, and empowers this Court to controul its proceedings by writs of *mandamus*, *certiorari*, &c. If therefore any party felt himself aggrieved by a summary conviction under this act, against which, owing to no Court of Quarter Sessions being held, he was unable (though entitled) to appeal, he would have a right to institute proceedings in this Court to compel the Court of Quarter Sessions to assemble, and hear, and determine his appeal.

The duties of Justices of the Peace and others, in the apprehension of persons committing any offence, punishable either on indictment or summary conviction, are pointed out in the 40th section. Any person committing any offence, may be immediately apprehended without a warrant by any Peace officer, by the party aggrieved, by his servant, or by any person authorized by him. Powers are given to Justices to grant search warrants in certain cases which were not before provided for, and any person to whom property shall be offered to be sold, procured or delivered, if he shall have reasonable cause to suspect that any offence has been committed on, or with respect to, such property, he is authorised, and if in his power, *is required*, to carry the party before a Justice of the Peace, together with the property, to be dealt with according to law.

It appeared to be doubtful whether this Court could lawfully defray the costs of, or make compensation to, any prosecutor, otherwise than out of any fine levied in the same prosecution; The 52d section empowers this Court to apply towards the reasonable costs of prosecuting offences, or compensating prosecutors any part, or whole sum arising out of fines levied by or transmitted to this Court.

Fines imposed by Magistrates for offences, where the penalty is by statute or regulation given to the King: ought, in all

cases, to be regularly transmitted to the Clerk of the Crown, in order, that they may be applied to the purposes of this act. In England, the expences of a prosecution for felony generally falls on the County, in which a party is tried; but here there is no fund to defray the expence of prosecutions, but the fines levied in this Court or transmitted by Magistrates.

I will next observe upon some of the many salutary provisions which this statute contains, for the punishment of offences committed against the persons of individuals.

In all cases of petty treason (which according to the statute of the 25th Edw. 3. c. 2. may happen in three ways—by a servant killing his master:—a wife her husband;—or an ecclesiastical person his superior to whom he owes faith and obedience) this act takes away the distinctions which formerly existed between that crime and murder. These distinctions, absurd as it may seem, were in favor of the person who committed the higher offence of petty treason, of which no person could be convicted but on the evidence of *two* witnesses at least, while in cases of murder, one credible witness is all the law requires: in murder, the prisoner could only have twenty peremptory challenges of the jury, in petty treason, he was entitled to thirty-five. Until the passing of Mr. Peel's act, this absurd distinction existed in England, as well as in this country.

Inconveniences arising from the strictness of the law, respecting the locality of offences, have been remedied by various statutes in England, and particularly in cases of murder. Many of these statutes were not applicable to this country, and the result has been that notorious offenders have escaped punishment altogether. An instance of this kind occurred here very recently: a man of the name of John Antony was convicted, in this Court, of a deliberate murder. The mortal wound was given in Calcutta, within the local limits of the jurisdiction of this Court; but the party was removed immediately, for medical assistance, to the General Hospital, in the suburbs of Calcutta, and a few yards without the local limits of the town, where he died. The place of his death was stated in the indictment according to the fact; and the prisoner was not stated to be subject to the jurisdiction of this Court, in any other way than as having committed the murder *in* Calcutta. Under these circumstances, the learned Judge, who tried this case, doubted, whether the conviction could be supported, the whole of the offence not having been completed within Calcutta. In consequence of this doubt, the case was transmitted to the proper authorities at home, and the legal advisers of the Crown thought the conviction could not be supported, and his Majesty, in consequences, granted a free pardon to the prisoner. There is a section in this act expressly providing against cases of this description, and allowing the Courts to try persons for murder, or manslaughter, where the

death, or the cause of death *only* happens, within the jurisdiction of the Court, where the offender is apprehended, or in custody.

It not unfrequently happens that upon indictments for murder found by the Grand Jury, and upon which the party is put upon his trial in this Court, circumstances transpire which lead to the conclusion that the killing was without malice expressed, or implied, but upon the sudden heat of passion; or under circumstances which induce the jury to find the prisoner guilty of the lesser offence of manslaughter. It must be obvious to every one, that in this species of homicide, although, in all cases, the main ingredient and characteristic of murder, namely, malice, is wanting, that the provocations under which it may be committed vary in almost every case. Thus, if a man takes another in adultery with his wife, and kills him directly on the spot, it is manslaughter. So, if a man be greatly provoked, as by pulling his nose, or other great indignity, and he immediately kills the aggressor, the offence is of the same nature; the law, in both cases, so regarding human frailty, as not to put a hasty and deliberate act upon the same footing with respect to guilt. But as in the one case there could not perhaps be any greater provocation to commit such an offence, so in the other nothing but the regard which the law pays to human infirmity, where death ensues from a sudden transport of passion, could mitigate the crime. This act, however, enables the Court to distinguish between the punishment with which cases differing so widely in moral guilt should be visited. The Court has a discretion in all cases of manslaughter, whether found guilty of that offence upon an indictment for murder, or where the indictment was originally prepared for the lesser offence; to transport for life, or for any term not less than seven years; or to imprison for any term not exceeding four years, or to fine.

Attempts to commit murder and the maiming of persons were offences punishable at common law only, as misdemeanors, by fine and imprisonment.

By statutes passed in England, some of which were applicable to this country, attempts to mayhem, or commit murder under certain circumstances, had been made felony. The 22 of Car. 2 (called the Coventry Act,) and the 9 of Geo. 1. c. 22, (called the Black Act) were in force here; but the nice constructions which had been put on these statutes, and their limited application, led to the passing of the 43 Geo. 3, generally known, as Lord Ellenborough's act. This statute did not extend to this country. The Black Act which extends here, made it felony maliciously to shoot at another, but Lord Ellenborough's act which made malicious stabbing or cutting, with intent to murder, a capital offence, not extending here, such offences were only misdemeanors. The consequence of this state of the law has been, that at the same criminal sessions, a prisoner has been convicted of a capital felony for

maliciously shooting at another; while a second prisoner has been convicted only of misdemeanor for stabbing with intent to murder; although the latter case was in point of moral guilt by far the most atrocious. In another case, which has occurred since I have sat in this Court, an English soldier was proved to have cut the throat of his comrade with deliberate malice; after inflicting wounds that left but little hope of his victim's recovery, he left him; by the assistance of medical skill, the man, contrary to all expectations, survived; and the soldier was put on his tral in this Court for the offence which he had commited. Owing to Lord Ellenborough's act not extending here, he could only be tried for a misdemeanor, and punished by fine and imprisonment. This incongruous state of things is now remedied, and all the provisions contained in Lord Ellenborough's act, together with the amendments, ingrafted upon it by Mr. Peel, are extended to this country.

This act makes it an offence in a master of a vessel to force a seaman on shore, or to refuse to bring home seamen whom he carried out, if they are in a condition to return when he proceeds on his homeward-bound voyage. The Judges have a discretionary power of imprisonment in such cases, in order to apportion the punishment to the degree of atrocity under which the offence is committed. To abandon a seaman on uninhabited places, or under dangerous circumstances, is a crime differing very much in degree from the leaving of a sailor behind in one of his Majesty's colonies.

I do not think it necessary to call your attention to the various other provisions contained in this statute for the punishment of offences against the person; but I proceed to point out such alterations in the criminal law affecting the property of individuals, upon which I think it desirable to make some remarks.

Previous to this act coming into force, the law provided no remedy for a very common and a very aggravated offence: viz the embezzlement by servants of the property of their masters. To mention a very recent intance: at the last sessions, a prisoner of the name of Bacharam Chatterjee, was indicted for larceny: he had taken an accountable receipt to a tradesman, with directions from his master to receive the amount: he received from the tradesman the debt due to his master, and absconded with the money. The money never having been in the master's possession, the offender, owing to nice and technical distinctions, with which I will not trouble you, was not guilty of larceny at common law; and the Court were very reluctantly obliged to discharge him. The dangers resulting from this doctrine, had in England, occasioned the enactment of a statute as far back as the year 1798, rendering embezzlement by servants or clerks an offence punishable with fourteen ears' transportation. But that act did not extend to this

country, and, consequently, offenders of this description have frequently escaped with impunity. This glaring defect has been remedied by the 100th section of the present act; which makes the embezzlement by clerks, or servants of their master's property, a felony, and enables the Court, at their discretion, to transport any person convicted of this offence, for any term not exceeding fourteen years; or to imprison, &c. for any term not exceeding three years. And in addition to this, the 102d section makes the embezzlement by bankers, brokers, attorney's, or agents, of deeds, bills, securities, or other personal effects, intrusted to their care, a misdemeanor, punishable with transportation for any term not exceeding fourteen years; or by such fine and imprisonment as the Court shall award.

For larcency committed by a servant or clerk of the property of his master, the Court is enabled to pass a more severe sentence (namely, fourteen years' transportation,) than they have the power of inflicting on a person committing the same offence, but not standing in the same relation to the party, whose goods are stolen: the punishment for simple larceny, in all other cases, being limited to transportation for seven years.

Where a party in order to obtain the possession of goods has recourse to fraud, and by means of some false pretence or token, succeeds in inducing the owner not only to deliver up the possession of the goods, but to part with the property; the offence is not larceny, but is a fraud or cheat. For the prevention of which, various statutes have been passed in England. The most effective of the statutes relating to this subject, was the 30 Geo. 2, c. 24, extended by the 52 Geo. 3, c. 64, to give you one example, of the various cases of frauds to which the 30 Geo. 2, has been held applicable, I will mention a well-known case. A prisoner pretended that he was intrusted by a foreign Nobleman to take some horses from Ireland to London, and that he had been detained so long by contrary winds, that his money was spent, upon this representation a person was induced to advance money to him; it afterwards turned out, that the whole story was a fiction, and the person was convicted and sentenced to hard labour on the river Thames. The 30 Geo. 2, c. 24, and the 52 Geo. 3, c. 64, not being in force in this country, various frauds and cheats, owing to the defective state of the law, have passed unpunished. The present statute has remedied this evil, and all the amendments and improvements engrafted by Mr. Peel, on the statutes of the 30 Geo. 2. c. 24, and the 52 Geo. 3. c. 64, have been introduced here.

Owing to the various statutes relating to forgery, passed in England, since the 13 Geo. 1., having been held not to apply here; this offence has been classed under the head of misdemeanors, punishable, however, with transportation in all cases to which the provisions of the 53 of Geo. 3, c. 155, applied.

The present act has made the forging of the various instruments set forth in the 72d section, felony; and left it to the discretion of the Court to transport for life, or any term of years; or to imprison for any term not exceeding four years. So much of the act of the 53 Geo. 3. c. 155, as related to this subject, has been, at the same time, repealed.

At the last criminal sessions, a wealthy native was convicted of uttering Company's paper, knowing it to have been forged; and was transported to the Prince of Wales' Island. Had this act been in force at the time he committed this offence, the result of this conviction would have been the forfeiture of all his personal property to the Crown: this being the invariable consequence of a conviction for felony. Such an addition to the sentence would, in the case of a rich Hindoo, have been no slight aggravation of his punishment.

It is desirable, that it should be known, that the forfeiture of property will be the inevitable result of all future convictions for this offence; and this Court has not the power to relieve a prisoner from this consequence of his conviction, whatever may be the mitigating circumstances that might induce the Court to pass in other respects, a more lenient sentence.

There are many provisions in this statute against the wilful and the malicious burning of houses, ships, &c. and against the demolition of other kinds of property. You are probably aware, that at the last Sessions, a person of the name of Thompson, was tried for setting fire to a ship in the river Hooghly, under circumstances which made the offence a misdemeanor at *common law*, although at that time there was no statute relating to this subject in force here. In the hope of completing an atrocious fraud upon those who had insured property, of which he had falsely stated himself to be possessed; this man deliberately set fire to a ship while the crew and other persons were on board; utterly reckless of endangering the lives of others, provided he accomplished the purposes of his long premeditated crime. This Court, upon his conviction, passed the heaviest sentence which the law would allow; namely, three years imprisonment, and a fine of two thousand rupees. Had this offence been committed but a few months later, he would have been liable, under this act, to have forfeited his life for the crime which he committed. All offences of this atrocious description, being now punishable with death.

There are many provisions in this act altering and amending the law of evidence.

The affirmation of Quakers and Moravians, are to be received in criminal as well as civil cases. The natives of any country within the limits of the charter of the United Company, who may be required to give evidence in any case, criminal or civil, and who shall object on the ground of religious scruple to take

an oath in the usual form, may, if the Court in its discretion, shall think fit, be permitted to make a solemn affirmation or declaration in such manner and form as the Court shall deem sufficiently binding on their conscience. This affirmation or declaration when taken, is to be of the same force and effect in all Courts of Justice and other places, where by law an oath is required, as if the natives had taken an oath in the usual form; and if convicted of having made a false affirmation or declaration, the native is subject to all the pains and penalties of perjury. Every person acquainted with the habits and customs of the natives, and with the great reluctance many of the most respectable amongst them, have to taking an oath in any form, will think this a most salutary provision; permitting the Court, in its discretion, to receive the testimony of natives, without obliging them to do what is so repugnant to their feelings; while at the same time, the ends of justice are secured, by making false affirmations, subject to the same punishment as false oaths.

In all criminal proceedings, the party who has sustained an injury, though of a nature the most likely to excite vindictive feelings, is a competent witness in support of the prosecution. A prosecution for forgery, forms the only exception to this otherwise general rule. The exclusion of the testimony of the party against whom the forgery was committed, arose from the supposition, that the witness would be discharging himself of his liability by the conviction; and was therefore so interested in the result of the trial that his testimony ought to be excluded; and the fact of forgery proved by other means. As a consequence of this distinction, it followed of course, that a party charged with forgery must escape punishment altogether, if the fact of forgery could not be proved otherwise, than by the testimony of the party, whose name was forged. The present act has removed this exception from the general rules of evidence; the party against whom a forgery is committed being, in all cases, a competent witness; but as in all other cases, the jury are to decide on the question of his credibility.

I will not further detain you by entering generally into the various improvements and amendments of the criminal law of England, which are, by this act extended to this country. The legislature, it would seem, is directing its attention to the improvement of all branches of the law of England, civil as well as criminal; a commission is now sitting for enquiring into the proceedings of the Courts of common law, and also as to the state of the law regarding the transfer of real property. Nor are individual exertions wanting to assist in the great work of improvement and consolidation. In the last sessions of Parliament, Lord Tenterden, the present Chief Justice of the Court of King's Bench, introduced a short bill of only two pages, relating to matters of contract, which having passed into an act, will be the means of checking much litigation and of

rendering a branch of the law clear and certain; which, from the variety of conflicting decisions, no man could, with any thing like certainty, pronounce what was the law. All these perplexing decisions, with which the reports of our Courts of law abound, are now fortunately swept away by the short statute I have mentioned. I cannot help expressing a hope that this and similar improvements may be extended to the King's Courts in India. Of the benefit that would arise from the introduction of juries in civil cases, I have before expressed my opinion from this place; I can only say, that every day's experience has strengthened the view I formerly took of this question, and I can only express a hope, that it may not be long before parties are allowed *the option at least* of having their causes decided by a jury, which I can never cease to think, is more competent to decide on matters of fact than the judges of this Court.

CHARGE OF CHIEF JUSTICE RYAN.

4TH SESSIONS, DECEMBER 3, 1828.

Gentlemen of the Grand Jury.

I am sorry to inform you, that your labour at the present Session will not be light, there are an unusual number of cases in the calendar, and some of them, I regret to say, of a serious nature. But before I proceed to observe on any of them, I think it desirable that I should explain what circumstances have given rise to such an unusual number of commitments. I believe there are now in the gaol about 130 prisoners, to take their trial at the present Sessions, making about an 100 cases. There is one case of murder, four cases of cutting with intent to murder, 13 cases of burglary, about 10 cases of larceny in a dwelling house, 5 cases of house breaking, 3 of robbery from the person, 3 cases of embezzlement, and more than 50 cases of simple larceny, in the greater part of which the property stolen, is of small value. The magistrates have, for a long time past, entertained an opinion that they might summarily dispose of cases of small thefts, without committing the parties accused, for trial in this Court. They, I believe considered themselves as justified in pursuing this course by the provisions of a regulation of 1814, which I have some reason to believe, was prepared by Sir Edward East, then Chief Justice of this Court,

and which as provided for by the 13 G. 3, c. 63, was duly registered. The sixth section contains the following provision; "And be it further ordained by the authority aforesaid, that "if, after the due registry and publication of this rule, ordi- "nance and regulation as aforesaid, any goods, chattels, mo- "ney, bond, bill of exchange, promissory note, treasury note, "banker's note, order, acknowledgment, or other security or "warrant, for payment of money, or entitling any person or "persons to the payment of money or other property, shall "have been stolen from any person or persons' house, shop, "ware-house, or place in the settlement of Fort William, "and any of the said securities for money, or any goods, "chattels, money, or other property, which shall, in the be- "lief of the person deposing to the said loss, be the goods, "chattels, money or other property so stolen, although the "same cannot be postively identified, shall be found upon or "in the possession of any person, who shall not be able to "give two Justices of the Peace, acting in and for the town of "Calcutta and factory of Fort William, and before whom he "may be taken, a satisfactory account of, or of the manner in "which he came by the same, or otherwise reasonably account "for his possession of the same, to the satisfaction of such "Justices, it shall and may be lawful for the said two Justices, "upon the oath of one or more credible witness or witnesses, "to take cognizance of the said offence, to issue their sum- "mons, or warrants to hear the parties, to examine witnesses, "and having taken in writing the substance of the complaint, "defence and evidence, to acquit or convict the person or "persons accused, and in case of conviction, to order every "such person or persons so convicted to pay a fine not ex- "ceeding one hundred sicca rupees, for each and every of- "fence of which such person or persons shall be so convicted, "and when such fine or fines shall be so imposed, shall fail to "pay the same within one week after such conviction, during "which week the person or persons, so convicted, and failing "to pay, shall be committed by the said Justices to safe cus- "tody, it shall and may be lawful for the said Justices to "order the person or persons so convicted, and failing to pay "at the expiration of the said week, to be publicly whipped, "or in lieu of such fine or fines and whipping, to be committed "to the house of correction to hard labour, for any time not "exceeding the space of six calendar months."

The property stolen, probably in the greater part of the convictions under this section could have been "positively identified" had the magistrate desired such evidence, and perhaps in many cases it was so identified, nevertheless, the magistrates proceeded to deal summarily with larcenies of property of little or no value. The magistrates having reason to believe, that doubts were entertained as to the propriety of their thus disposing of

this class of offences, by those whose opinion they were bound to respect, deemed it expedient to send all such offenders for trial before a jury in this Court, and this is the reason of the unusual number of cases that will come before you, the greater portion of the cases are simple larcenies, and they would have been on former occasions summarily disposed of in the manner I have mentioned. I think the magistrates have acted judiciously, and I am bound to say that they have no jurisdiction to dispose summarily of cases of larceny unless the case falls entirely within the provisions of the section I have already cited. But gentlemen, it is right that I should inform you that the course which the magistrates have pursued here, does not differ widely from that adopted by some of the Police magistrates in London. To shew you the course that has been adopted there, I must read to you some extracts from the third report of the Commissioners on criminal law. Lord John Russell had directed the Commissioners to report, whether it would be adviscable to make any distinction in the mode of trial between adult and juvenile offenders, and if not, whether any class of offenders could be made subject to a more summary proceeding than trial by a jury. The evidence of Sir Frederick Roe as given in the Appendix, is that to which I would particularly call your attention, as shewing that petty larcenies committed by juvenile offenders, have been disposed of under the Vagrant Act, summarily instead of committing the offenders for trial before a jury. Question. "Supposing a young of-
" fender of any kind who has actually committed a felony is
" brought before a magistrate; what is then done, supposing
" the felony to be of no great amount? Answer. Most magis-
" trates in such cases consider that, though a felony has actual-
" ly been committed, the circumstances under which it has
" been committed are such as justify our acting on the Vagrant
" Act, taking the evidence of the circumstances before the
" felony is committed, as the foundation of the committal.

" Question. In fact, in respect of felonies to a small amount
" committed by children, you do not usually commit for trial?
" Answer. In a great many cases, not.

" Question. Is there any general rule by which you would
" distinguish? Answer. No; one acts on the discretion
" of the moment: sometimes a complaint of the prisoner's
" previous conduct made by the master or by parents, may
" lead to committing him for trial, in hopes of getting him
" transported, and so entirely breaking off the system of crime
" which summary punishment would not effect.

" Question. You would be guided not so much by
" the amount of the theft as by the previous habits?
" Answer. In a great measure, though, in the case of an
" important felony, I should never take upon myself to exer-
" cise the summary jurisdiction, nor where there is property of any

" value; a magistrate has no power to order the restoration in " the event of committing summarily, which always takes place " in the Court above; if, therefore, the property is material, " or even, being smaller, should have passed into the hands of " a third person, who is reluctant to give it up, such a case " must go to the Court above: because there are no means of " compelling restoration.

" Question. That is a circumstance by which you would " be guided in your discretion as to the course you took? " Answer. Certainly; because, unless the property is restored, " there is a still farther loss sustained by the complainant.

" Question. Where the child is of tender years, ranging from eight to ten or twelve, and the property stolen " inconsiderable, you do not usually commit for trial for " felony, but only under special circumstances? " Answer, " Just so.

" Question. Ordinarily you commit under the vagrant act? " Answer. Yes, the practice of some magistrates is different, " some magistrates consider themselves bound, in every case of " felony actually proved, to commit for trial; they think they " have no discretion. I am not only guided in determining " what course I shall pursue by reference to the particular circumstances of the case, and the statements of previous character which I have alluded to, but also with reference to the " expenses which fall upon the county in every prosecution, " of however, trifling a nature; and, when I think it probable " that the punishment inflicted by the court will not be greater " than I should direct, and consider that in a town of business " like this, the time of the persons who would have to go to the " Old Bailey Central Court, one, two or three days, is of great " importance to them, I think, I do more service in exercising " the summary jurisdiction, which costs nobody a farthing, and " is the cause of very little loss of time.

" Question. In these cases where a felony is committed, and " where it is under such trifling circumstances, that a discretion " is exercised as to committing for an act of vagrancy, what is " the course taken; is there an information in the ordinary " course of a felony, or merely a complaint under the vagrant " act?—Answer. The prisioner is brought before a magistrate by the constable or person apprehending him, the evidence of all the witnesses is taken in writing, and upon that " the magistrate forthwith pronounces his decision."

The extracts I have read to you are sufficient to show that the course which the magistrates of Calcutta have adopted, is not altogether without precedent, in a place where we may presume, a strict adherence to the letter of the law is more closely watched than here.

There can be little question, that if the present practice of committing for trial, all cases of larceney, however trivial to this Court continues, that much inconvenience must be occasioned to the public, and it will be for those who have the power of legislating to consider whether the law should not be altered, for until a change is made by legislative enactment, it is quite clear that the magistrates must pursue their present course.—The inconvenience caused by this mode of proceeding is obvious, I have ascertained that at the present sessions, there are in attendance about 370 witnesses, the greater part of these witnesses, if the cases had been as heretofore disposed of at the police, would have been obliged to attend there only.—But in these cases the witnesses and parties have attended at the police, and they have now to attend before the Grand Jury, and probably in most cases a third time before the petty jury in this Court. This loss of days of labour to the poor, is a serious evil, for in whatever way this Court may regulate its proceedings, it is impossible to prevent the witnesses being often for days in attendance. The attendance of the grand and petty jury, called, as many of them are, from the offices of government, tends to retard the despatch of public business, an inconvenience which also deserves consideration. The occupation of the time of the judges of this Court, I mention only to say that I speak the sentiments of my brethren as well as my own, in stating that we will most willingly and cheerfully undertake any additional labour that may tend to the better administration of justice, but it may be a question whether a better public use may not be made of our time, than in the trying of offences of this description.

The inconveniences which I have alluded to, would not be remedied if these cases were tried before the Quarter Sessions, supposing that Court was called into action; there would be the same number of attendances on the part of the witnesses and parties, the same on the part of the grand and petty jury.

The propriety of increasing the summary jurisdiction of magistrates has been of late much discussed in England, and is considered in the report to which I have already called your attention. This report principally relates to juvenile offenders, and the commissioners recommended that the summary jurisdiction of magistrates should extend to the following *particulars*.

" 1. That upon charges of larceny, where the value of the
" property stolen does not exceed 10s, and where the age of
" the culprit does not exceed 15 years, a single justice of peace
" should have a discretionary power to dismiss the prisoner al-
" together, (although a felony may be proved,) if the circumstan-
" ces of the offence are of so trivial a nature, as in his judgment
" to be unfit for prosecution by indictment; or to take sufeties
" for the good behaviour of the prisoner, or bail for his appear-
" ance at a future day for trial.

"2. That upon charges of larceny, where the culprit, after "hearing the information and evidence against him, voluntarily "confesses the offence, a single Justice of Peace should have "a discretionary power to take such confession, and to sen-"tence the prisoner forthwith to be imprisoned in execution for "any period not exceeding 6 months, if the value of the pro-"perty stolen does not exceed 10*s.*, and for any period not "exceeding twelve months if the value of the property stolen "is above 10*s.* and does not exceed 5*l.*

"3. That on summary charges of larceny, where the value "of the property stolen does not exceed 10*s.*, and where the "age of the culprit does not exceed 15 years, two Justices of "Peace, sitting together, should be empowered to hear the "evidence for the prosecution and the defence, and to adjudi-"cate thereon, if they think proper; and in case of conviction, "to sentence the offender forthwith to be imprisoned in execu-"tion for any period not exceeding six months."

Upon this 3d proposition, the Commissioners make the following observations.

"The effect and object of this proposition is merely to give "to two magistrates, in cases of petty thefts by young persons, "the same summary jurisdiction which a single magistrate "already possesses, with respect to various offences not "amounting to felony. By several statutary provisions recent-"ly made, single magistrates are empowered to inquire into, "and punish in a summary manner, numerous acts of stealing, "which do not, for technical reasons, constitue larceny at "common law. For instance, by the statute 7 & 8, G. "4, c. 29, the offence of stealing growing trees, shrubs, "&c. which are not the subject of larceny, as being part of the "realty, was made punishable by means of a summary convic-"tion before a magistrate. The facts to be investigated upon "charges made under the above statute, were of pre-"cisely the same nature as those which constitute larce-"nies; and therefore, if the magistrate was competent to "deal summarily with the one, he was equally com-"petent to adjudicate upon the other. Indeed the only "plausible reason for the exclusion of the latter was, that "larcenies involved the serious consequences of forfeiture and "infamy incident to felony at common law, and that it was "considered to be unsafe and unconstitutional to allow per-"sons to be convicted of such offences without the interven-"tion of a jury. To meet this difficulty, which does not, "however, appear to us to be of much practical importance, "it might be provided that a summary conviction for larceny "should not be attended with the ordinary consequences of "forfeiture and disqualification resulting from a conviction of "felony by a jury. Independently of this objection, we are "quite unable to discover any just principle in this distinction.

"If it is expedient to try and punish offenders by a summary jurisdiction for stealing property, which for a mere technical reason, is not the subject of larceny, we can perceive no well-founded objection to extending such jurisdiction to petty thefts of any kind of property. It cannot be a rational distinction, that if a man steals an apple blown from a tree, the facts which constitute his offence can only be investigated by a process applicable to the highest crimes; while, if he cuts down and steals the tree itself, he may be tried and punished summarily by a single magistrate."

Nearly all the witnesses examined by the Commissioners, (many of them persons of great practical experience,) were in favor of giving summary jurisdiction to two justices in all cases of larceny, without reference to the age of the accused, or the value of the property stolen. The summary jurisdiction of magistrates in certain cases of stealing, of injury to property, and of assaults, as well as under the revenue, game, vagrant, poor, police and other laws in England, is now so wide that the number of offenders imprisoned under summary convictions, greatly exceeds those committed under the sentences of Courts; of 87,245 criminal offenders who entered the prisons of England and Wales in the years 1836 (according to the Second Report of the Inspectors of Prisons), no less than 53,270 or about 60 per cent. were persons summarily convicted. I cannot help being impressed with the expediency of enlarging the summary jurisdiction of magistrates in this city, and after, as I have shewn from the extracts I have read, the principle of trying petty thefts in a summary manner has been sanctioned by various statutes in England, (1) I cannot see any substantial objection to expressly extending the jurisdiction of magistrates here to the absolute trial of trivial larcenies. As to the details of such a measure, I do not think it necessary to allude to them here. It will be for those who have the power to legislate to consider whether such a jurisdiction should be extended to one or more Justices of the Peace; whether it should be limited by the age of the offender or the value of the property stolen; whether there should not be a power of appeal to a higher tribunal. Upon these questions I am not about to trouble you, I feel confident that the observations which I have thought it right to make, will be the means of calling the attention of those whose duty it is to amend and inquire in to the law, to a subject of so much importance in all its bearings to the inhabitants of this place.

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(1). See the Indian Criminal Act, 9. G. 4, c. 74. § 97, which makes the stealing of any dog, or any bird, or beast, ordinarily kept in a state of confinement, not being the subject of larceny at common law, an offence, on which the party being convicted before a Justice of the Peace, shall be fined over and above the value of the dog, &c. such sum of money not exceeding 200 rupees, as to the Justice shall deem meet:

CHARGE OF CHIEF JUSTICE RYAN.

1ST SESSIONS, FEBRUARY 18, 1839.

Gentlemen of the Grand Jury.

I am anxious to call your attention to certain acts which have recently been passed by the Hon'ble the President of the Council of India in Council.

You are aware that the Act 3 & 4, W. 4, c. 85, has empowered the Governor-General in Council to make laws and regulations for all persons, whether British or Native. Under the 43d section of this act (termed the Charter Act) the Governor-General in Council has power to make laws, repealing, amending, or altering any laws or regulations in force at the time of passing this act, but he is prohibited from making any laws which shall repeal, vary, or suspend any of the provisions of this act, or the provisions of any act thereafter to be passed, in any away affecting the Company—the British territories in India, or the inhabitants thereof. Under the powers contained in the provisions of the statute I have cited, the acts to which I shall call your attention have been passed.

These acts are No. 25 of 1838. No. 28 of 1838. No. 31 of 1838.

I will first observe on the act 25 of 1838 relating to Wills.

In the first year of Her Majesty's reign, an act was passed for the amendment of the law relating to wills. This act was principally framed on the recommendation of certain Commissioners, one *Commission* having been appointed to enquire into the law of England, relating to *real* property, and the other, into the practice and jurisdiction of *Ecclesiastical* Courts. Both of these commissions reported in favor of most of the provisions contained in this statute. The reports of these Commissioners were afterwards laid before both Houses of Partiament. They were considered by two committees at different times in the Commons, and by two committees in the Lords. A draft of a bill founded on these reports was then prepared, and submitted generally for the comments and observations of the profession at large. And ultimately, after much disscussion in the Commons and the Lords, this bill, with some alterations, was passed into a law. The subject therefore, received all the consideration on the part of the legislature, which the vast importance of the interests affected by it required.

The general objects of this statute are, to remove danger, and error, and litigation, arising from wills made by persons unaccustomed to legal forms, and to lay down rules so plain and simple, that they may be easily understood.

This statute did not extend to Her Majesty's Indian territories.

The Judges of this Court, after consulting their brethren at the other presidencies, applied to the Governor General in Council, to extend its provision to India, all the Queen's Judges at the other presidencies, and at this, being of opinion, that evils and difficulties must necessarily arise, if one uniform mode was not adopted for the execution of wills, which in many cases, are to operate partly in this country and partly in England. Thus, for example, a man having an estate in *England*, and an estate in *India*, and devising them both by the same will, might find, that the form, that suffices to pass the one, will not transmit the other.

I will now direct your attention to some of the provisions of this act. It commences with defining the *meaning of words*. It gives the widest meaning to the word *Will*—it extends it to a testament, a codicil—to an appointment, &c. So the words "*real estate*," extend to messuages, lands, rents, and hereditaments, whether freehold, copyhold, &c. So "*personal estate*" extends to leasehold estates, money, shares of Government, or other funds, securities for money, and all other property which devolves on an executor, Every word importing the singular number only, to be extended and applied, to several persons and things as well as one, every *word* importing the masculine gender only, to be extended and applied to female, as well as male. It then proceeds to repeal several acts or parts of acts, amongst them, those termed the *statutes of wills*—and certain clauses of the *statute of frauds*, by which, the law of wills, as far as relates to those persons to whom this statute is applicable, was formerly regulated. It then proceeds to state to whom the act applies. Sec. 3 provides, that the act shall only extend to the wills of persons whose personal property cannot, by the law of England, pass to their representatives, without probate or letters of administration, obtained in one of her Majesty's Supreme Courts of Judicature.

This act does *not* extend to the wills of any soldier in actual military service, except as to real estate, as to which the same formalities are to be observed as provided in regard to other persons, or any mariner or seamen being at sea, nor to wills made before the 1st February 1839; but all other wills, with the exceptions I have mentioned, made after the 1st February 1839, come under the provisions of the act. It is lawful for every person to devise, bequeath or dispose of, by his will executed in the manner directed by the act, all *real* estate, and all

personal estate, which he shall be entitled to, either at law or in equity, at the time of his death. All property may thus be bequeathed by will. By the first section of the act, *real estate* extends to manors, advowsons, messuages, lands, tithes, rents, and hereditaments, whether freehold, customary freehold, tenant right, customary or copyhold, or of any other tenure, and whether corporeal, incorporeal, or personal, and to all future and contingent interests therein or in any personal estate. "*Personal estate*" extends to leasehold estates, and other chattels real, and also to monies, shares of Goverment and other funds, securities for money (not being real estate), debts, choses in action, rights, credits, goods, and all other property whatsoever, which by law devolves upon the executor or administrator.

By section 9, *a will can only be made in writing*; and it *must be signed* at the foot or end, by the testator himself, or, if he is unable to do it, by some person for him in his presence, and by his direction; and the testator must either make or ackowledge his signature in the presence of *two* or more *persons* who are to be present at the same time, and who are to *sign their names as attesting witnesses*, in the presence of the testator, but no particular form of attestation is necessary. This mode must be observed by all persons, male or female, in making their wills. If any person is drawing up his will, or having it drawn up for him, without legal assistance, the best mode of expression will be the simplest and plainest that can be used. Care must be taken not to bequeath legacies to *attesting witnesses*, or even to the wife or husband of an attesting witness, as all legacies so bequeathed are void in law. The object of this enactment seems to be, to prevent any will from being disputed or nullified, on account of any alleged undue interest on the part of an attesting witness. If, therefore, a testator wishes to give any thing to an attesting witness, he must do it in some other way than by a legacy. But creditors and executors can be attesting witnesses.

By section 7, persons under twenty one years of age cannot make a valid will. Neither by section 8 can married women in the life time of their husbands except where they have property settled on them with a power of devising, &c.

By common law, the male infants of 14 and females *of* 12, might dispose of their property by will, and their will remained in force, after their majority, unless revoked. But they were incapable of acting as executors until 17. And by 38 G. 3. c. 87, sec. 6, not until 21. But infants had *generally* no power to dispose of real estates until the age of 21. So that they might dispose of personal property to unlimited amount, and not of one acre of real estate. (Except by the custom of particular places.) But they might appoint guardians of their

children by will. Now infants cannot appoint guardians of their children; and the *age of* 21 is the limit of testamentary capacity *in all cases.*

A doubt was suggested in the House of Lords as to the expediency of this law with reference to illegitimate children. If a father of an illegitimate child dies under age, he is not able to provide for such issue by his will. This is certainly a hardship arising from the general incapacity of an infant to bequeath by will. Again, a child, legitimate or illegitimate, can make no gift, if he dies under age, whatever may be his means, to any one to whose kindness he may have been indebted for nurture and education.

The law as to the incapacity of infants has long been silently growing up. All conveyancing forms are studiously framed to prevent the disposition of property until the party entitled has obtained the age of 21. The only way in which an infant can bind his property is by incurring a debt for necessaries; all other contracts are void.

By section 18, any person having made a will and marrying afterwards, the act of marriage revokes the will, (unless made in exercise of a power of appointment, when the estate, real or personal, thereby appointed, would not, in default of such appointment, pass to his or her heir, executor or administrator, or the person entitled as his or her next of kin, under the statute of distributions."

Section 20 declares, that a will can only be revoked, by being destroyed, or by the execution of a new will.

By section 21 alterations must be made and executed in the same manner as is required for the execution of a will.

Persons making any alterations in their wills, must therefore be careful, that the alterations are witnessed and signed in the same way as the wills.

Thus it appears from the section I have cited, there are only four modes by which a will can be revoked. 1. By the marriage of the testator after making his will. 2. By a revoking or inconsistent will executed as a will is required by the act to be executed. 3. By duly attested erasures or alterations of the will itself. 4. By destruction of the will itself by burning or tearing, &c.

Section 23 provides, that no conveyance or act done subsequent to the executions of a will, of or relating to any real or personal estates, therein comprised, except an act by which the will shall be revoked, will prevent the operation of the will with respect to such real or personal estate.

By section 24, wills are to be construed as if made immediately before the death of the testator, unless a contrary intention appears from the terms of the will itself.

Real property which the testator did not acquire until after the date of his will, could not, before this act, pass by that will without republication, notwithstanding the will purported, in the most general terms, to devise all real estate to which the testator might die entitled. In the case of a mere exchange of lands, the lands exchanged would not pass. These inconveniences and others of a like nature which frequently arose under the former state of the law and which often defeated the intentions of testators, the sections I have just cited have removed.

By section 25, *a residuary devise* shall include the estates bequeathed by lapsed and void devises, unless a contrary intention shall appear.

By section 26, *a general devise* of the testator's lands shall include copyhold and leasehold, as well as freehold lands, unless a contrary intention shall appear.

By sec. 27, *a general gift* shall include estates over which the testator has a general power of appointment, unless a contrary intention shall appear.

By sec. 28, *a devise* without any words of limitation, shall be construed to pass the fee, unless a contrary intention shall appear. This clause has also removed much uncertainty: under the former state of the law, a devise without words of limitation in many cases did not carry the fee, though in some instances it did, this clause provides that *all devises without words of limitation* shall pass the fee.

By sec. 29, the words "*die without issue*" or "*die without leaving issue*," shall be construed to mean, die without issue *living at the death of* the person, and not an indefinite failure of his issue, unless a contrary intention shall appear by the will, by reason of such person having a prior estate tail, or of a preceding gift, being, without any implication arising from such words, a limitation of an estate tail of such person or issue, or otherwise; but this act shall not extend to cases where such words import, if no issue, described in a preceding gift, shall be born, or if there be no issue who shall live to attain the age, or otherwise answer the description required, for obtaining a vested estate by a preceding gift to such issue. This provision has removed much uncertainty, but the difficulties that have arisen, and which are here remedied are of too technical a nature to be stated for any useful purpose in an address or on an occasion like the present.

Sec. 33 provides, that if a child or other issue of the testator, to whom any real or personal estate may be devised, or bequeathed, dies in the life time of the testator leaving issue, and such issue be living at the time of the testator's death, the devise or bequest shall not lapse. The rule that gifts lapse if the person to whom they are made, dies in the life time of the testator, often operates with great hardship and defeats the testator's intention. Thus, as the law formerly stood, if a father gave his

property amongst his children, and a son or other child died before him leaving a family. such family were frequently disappointed. These inconveniences are provided against, and the issue or family become entitled to the property given to their parent.

What I have stated are the main points of a very important act, which will tend to simplify the law of wills, and prevent a portion of the litigation so often arising from the disposal of property by bequest, still there are, necessarily, technicalities and exceptions involved in the new law, to understand the practical effect of which, the testator should consult his professional adviser.

I shall now advert to the second act to which I alluded at the outset, namely act 28 of 1838, which relates to the punishment of the offence of *perjury*.

The statute 39 & 40 G. 3, c. 79. s. 12, empowered this Court to transport persons convicted of the offence of perjury.

That section was repealed by s. 126, 9 G. 4, c. 74, called the Indian criminal act, and perjury, with some few exceptions provided for by particular statutes, such as perjury in the Insolvent Court, &c. was punishable only as a misdemeanor, by fine and imprisonment.

This act 28 of 1838, restores the law to its former state, and allows the Court, in *all* cases, should it seem meet, to transport.

Perjury, as you are aware, gentlemen, is an offence unfortunately of too common occurrence in this country, and so injurious to the due administration of justice, that it is necessary to suppress it, if possible, by severe example, and the Court is authorised to punish by transportation for life, or for a term of years, or by imprisonment for four years with or without hard labour.

I shall proceed to comment upon the provisions of the act 31 of 1838.

It may be in the recollection of some whom I have now the honor to address, that at the April sessions of 1829, I called the attention of the Grand Jury, from this place, to the act then recently passed, *for the improvement of the administration of crimal justice in the East Indies, and the act for the relief of insolvent debtors.* I then explained why the amendments in the criminal law of England, which had, from time to time, taken place in England, by various acts of Parliament since the year 1726, had been held not to extend to this country, and I also stated at some length the great improvements which this statute, for the first time introduced, assimilating the criminal law of India to the improved state of the law, on this subject, at home. Since that time various improvements have taken place in the criminal law of England, but those of the greatest moment and importance are contained in acts passed in the first year of the reign of her present

Majesty. These acts did not extend to India, and the Judges thought it expedient to apply to the Government to exercise its legislative functions, and to extend these ameliorations of the law to the Queen's Courts in India. The provisions of the several statutes passed in the first year of her Majesty are embodied in the act 31, of 1838.

I will now detail its provisions.

Its principal object is to take away capital punishments, and to mitigate the rigour of the law. The Commissioners in their report on criminal law recommend, and I shall quote their remarks, that capital punishment should be inflicted in respect of such offences only, as are expressly directed to the *destruction of life, or accompanied with actual danger to life, or* with so much personal violence as denotes a design to commit murder, or endanger life. *But this is not the sole object*, (viz decrease of capital punishments,) another and important object is, to classify crimes according to certain gradations, and introduce precise definitions of the offences to which different degrees of punishment should be assigned. This act modifies and restricts the application of capital punishment in the following classes of offences, and provides appropriate secondary punishments for such of them as it is thought, ought no longer to be visited with capital punishment. 1. Malicious injuries. 2. Burglary. 3. Robbery. 4. Burning and destroying ships.

First as to malicious injuries. Under s. 59, 9 G. 4, c. 74, 1. The administering or attempting to administer poison. 2. The attempting to drown, suffocate or strangle. 3. The shooting at, or attempting to discharge loaded arms at. 4. The stabbing, cutting or wounding, accompanied *with intention to* commit murder, were capital offences *under* s. 60.

Shooting at or attempting to discharge loaded arms, and stabbing, cutting and wounding with the *intention* to maim, disfigure, disable, or to do grievous bodily harm, or to resist the lawful apprehension of the offender for a crime, were capital offences, provided such acts were committed under such circumstances that if death had ensued thereupon, the same would, in law, have amounted to the crime of murder. *So under* s. 61, the using drugs or instruments for the purpose of procuring the miscariage of a woman quick with child, was a capital offence. These sections are now repealed and the severity of the law mitigated.

The only case in which death is now to be inflicted, is where the direct *intention to murder*, evidenced by the overt acts of administering poison, attempting to drown, suffocate or strangel, of cutting or striking, are accompanied by the further overt act, of actually *causing some bodily injury dangerous to life.* Where these acts are done with the intent to murder, and *no bodily injury is effected*, the party is liable to transportation for life, &c. So also where the *intention* is to *maim*, &c. there, the

shooting at, stabbing, cutting, or maiming, is no longer a capital olony, but a transportable offence.

But there is one important provision in s. 3, to which I must call your attention. "It is enacted, whosoever shall administer to, or cause to be taken by any person any poison or other destructive thing, or shall stab, cut or wound any person, *or shall by any means whatsoever cause to any person any bodily injury dangerous to life*, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and being convicted thereof shall suffer death."

I cannot better illustrate the effect and bearing of this section of the act, than by reading to you the observations of the Commissioners, appointed to inquire and report upon the state of the criminal law, contained in a letter addressed to Lord John Russel, Secretaty of State for the Home Department, dated 19th January, 1837.

"It is material to direct your Lordship's attention to a peculiarity in our provision, respecting malicious injuries which has the effect of rendering it, in one sense, far more comprehensive than the law now in force.

"*Although in the enumeration of the specific overt acts accompaying an intention to murder, we have generally followed the* words of the 9th Geo. 4, c. 31, we have added other words of a more comprehensive nature which are not found in that statute. As the omission to define distinctly all actions or circumstances which are to form the component parts of crimes, may, at first, appear to be a departure from an important principle, we think it right to explain fully the reasons which have induced us to propose this innovation.

"From the restriction of the essence of the crime to certain specific acts, and the consequent omission of innumerable other acts equally criminal, there has been a frequent failure of justice in the application of former enactments upon this subject; by Lord Ellenborough's act, a "wounding" with intent to murder, unless produced by "*cutting* or *stabbing*" would not amount to a capital offence. The 9 G. 4, c. 31, s. 11, improved upon this, by adding the much more comprehensive word "wounding." But, even with this addition, the clause by no means extends to all the cases which are within the principle and object of the enactment.

"Since the passing of the 9 G. 4, c. 31, assaults of the most violent and savage description have been frequently committed, attended, beyond all doubt, by some of the various intents mentioned in that statute, but as, in the strictness of legal interpretation, they did not constitute the precise acts therein specified, they were held not to be punishable under its provisions.

"Among the cases reserved for the opinion of the Judges from the various courts of criminal jurisdiction, questions, upon the meaning of the words of this statute have been much the most frequent, as well as the most subtle and perplexing. A few intances of the debateable points which have arisen, will satisfy your Lordship of the expediency of some further definition, or extension of the law with respect to crimes of this description. At the April old Bailey Sessions in 1834, a man was indicted for maliciously wounding a peace officer by biting off the end of his finger with intent to resist his apprehension He was convicted by the jury; but a doubt having arisen upon the construction of the words of the statute, whether this act was a "wounding," the question was reserved for the opinion of all the Judges, who held, by a majority of 7 to 6, that in order to constitute a "wounding" so as to bring the offender within the 9 G. 4, c. 31, the injury must be inflicted with some *instrument.* Another instance occured in a case tried before Lord Denman, at the summer assizes for Somersetshire, in 1834, in which a man, with the deliberate and avowed purpose of destroying his wife, had assaulted her with a heated poker, had beaten her furiously till she was insensible, and had actually set her clothes on fire, when he was prevented from killing her by the interference of the neighbours. Though the bruises and burns occasioned by this ferocious assault had nearly produced death, *no incised wound* was inflicted, and therefore, as the case did not fall within any of the clauses of the statute, he could only be punished for an aggravated assault.

"Instances of this kind, where crimes of the most mishievous tendency, escape the proper measure of punishment, in consequence of the insufficiency of the law to meet them, necessarily injure the character of the administration of justice, and produce that popular distrust of the efficiency of the laws which is always the result of great discrepancies between legal decisions, and the dictates of common sense. Influenced by this consideration, we have been anxious to introduce some provisions by which the difficulties of construction, arising upon former statutes, might be avoided, or diminished, without, however, incurring the dangers resulting from the use of terms of loose and general description. For this purpose we have added, to the specific overt acts taken from the existing statute, the words "*or shall by any other means whatsoever manifesting a design to kill, do actual bodily harm with intent to murder.*

"We have already observed that in principle there seems to be no reason for a distinction as to the punishment between a direct attempt to murder, however effected, and unattended with injury to the object and the combined facts of the attempt and the actual injury. It is therefore on the ground of policy

alone, that the law thought it proper to place so grave a crime, as deliberate design to murder, amongst secondary offences."

The 6th section of the act 31 of 1838 provides, that acts which before only would have amounted to aggravated assaults, shall be now considered as felonies, namely, the sending, &c. any explosive substance, or noxious thing, or throwing upon a person corrosive fluid, &c. with intent to burn and disfigure, *and whereby the party is burnt or disfigured.*

Under the 61 section of 9 G. 4, c. 74, it was a capital offence to attempt to procure abortion, *if the wowan was quick with child.*

This section the present act has repealed, abolishing the capital punishment, and classifying this offence amongst secondary crimes. As the law stood before, the party was punishable with death if the woman was *quick* with child; with transportation if that fact could not be established; this distinction between the offences (as the capital punishment is abolished), is taken away.—It was under the former law necessary in both cases to shew, that the woman was *pregnant*, and the word *pregnant* was actually inserted in the bill as introduced into the House of Lords, but rejected by Lord Lyndhurst, on the ground, that the guilty intention was the same whether the woman was pregnant or not.

The 8th section of this act contains a most salutary provision.

"It provides that if, on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever where the crime charged, shall include an assault against the person, it shall be lawful *for the jury to acquit of the felony*, and to find a verdict of guilty of assault against the person indicted, if the evidence shall warrant such finding, and when such verdict shall be found, the Court shall have power to imprison the person, so found guilty of an assault, for any term not exceeding four years."

Although of course a party might be indicted for the assault separately, and if convicted might be punished by fine or imprisonment as in other cases of misdemeanor, yet, a count could not be added for a misdemeanor to a count for the felony in the same indictment, and offenders acquitted of the felony usually escaped punishment altogether.

I will now call your attention to the offence of burglary, one of most frequent occurrence in this place, especially in the native parts of the town.

I cannot better explain the alterations that have been made under this head, than by again referring to the letter of the Commissioners.

"The next class of offences to which we have endeavoured to apply the same principles of definition and arrangement, is comprehended under the general head of *burglary*.

"By the common law, simple burglary, which, as defined by Lord Coke, is nothing more than the breaking and entering a dwelling-house, in the night-time with intent to commit a felony, is a capital offence, however small the breaking, and however trifling the felony intended or effected. It appears to us, that in no department is the criminal law more essentially defective than in its provisions upon the subject of burglary. were it even to be assumed that it is proper that the forcible invasion and disturbance of the right of habitation in the night-time with a felonious intention should be punishable with death, the defintion of the offence is far too wide: for, as the absence of day-light is the only *legal* criterion of night, and a mere constructive breaking is sufficient, it follows that a child who opens a casement and takes out an apple at six o'clock in the evening, may be just as liable to capital punishment as a gang of burglars who plunder a house at midnight.

"In consequence of the unreasonable latitude of the law, it would be impossible to carry it into execution at the present day; and accordingly we find that in practice, it never happens that execution does follow the sentence of death upon covictions for burglary, unless the commission of the technical crime has been attended by acts of personal violence or cruelty, or some other aggravations, which completely alter the complexion of the offence, and constitute in truth the criminal acts for which the offender suffers, of the criminality of these acts, and their probably fatal consequences to himself, the offender has no notice by the letter of the law, nor are they contained in the formal charge against him in the indictment; they are not recorded against him, if proved; and their truth has frequently to be inquired of in the absence of the prisoner, after the close of the trial and dismissal of the jury.

'It appears to us that the practical remedy for such evil properly consists, in defining those acts and circumstances which have hitherto been considered as aggravations, and by constituting them, when joined with the burglarious entry, substantive crimes. We further propose to classify them according to their different degrees of atrocity, upon the same principle which we have followed with respect to malicious injuries. Thus, all burglaries committed *in pursuance of a direct attempt to murder, or attended with acts of cutting, stabbing or wounding, beating*, or *striking*, or *the use* of any other *personal violence*, will continue to be capital. Other modifications of the offence which at present do not usually induce the infliction of capital punishment, but are commonly followed by an aggravated punishment short of death, we have placed in our second class."

The statute of her Majesty relating to burglary has been framed principally on these suggestions, and the clauses introduced into the present act, provide.

Sec. 9.—" And it is hereby enacted, that whosoever shall burglariously break and enter into any dwelling house, *and shall, assault with intent to murder* any person being therein, or shall *stab, cut, wound, beat* or *strike* any such person, shall be guilty of felony, and being convicted thereof, shall suffer death."

Sec. 10,—"And it is hereby enacted, that whosoever shall be convicted of the crime of burglary, shall be liable at the discretion of the Court, to be transported to such place as the Court shall direct for life, or for any term of years, or to be imprisoned for any term not exceeding four years."

Sec. 11.—" Provided always, and it is hereby enacted, that so far as the same is essential to the offence of burglary, the night shall be considered, and is hereby declared to commence at nine of the clock in the evening, and to conclude at six of the clock in the morning of the next succeeding day."

It will be seen that this section defines what before was quite uncertain, namely, what shall be considered *as night*. The general criterion before being whether there was day light or twilight enough begun, or left, whereby the countenance of a person might be reasonably discerned, than which, nothing could be more vague and uncertain.

Sec. 84 of 9 G. 4, c. 74, relating to burglary is repealed. Sec. 85 is also repealed, and capital punishment withdrawn for offences analogous to burglary, namely, stealing in a dwelling house and putting a person in fear, stealing to the value of 50 sicca rupees, &c. These are now transportable offences.

I shall in the next place advert to the crime of robbery.

Robbery is at present capital by the common law, and also by the statute 9 G. 4, c. 74, s. 80. The 81st section of that statute specifically declares the law upon a point which was previously somewhat doubtful, by enacting, that any person who shall accuse or threaten to accuse any other person of any infamous crime, with a view to extort, and by the intimidation of such accusation or threat, *shall actually* extort any chattel &c. from him, shall be deemed to be guilty of robbery.

The Commissioners observe, " that independently of the statutable robbery last mentioned, the crime of robbery is never, we apprehend, punished with death at the present day, unless in cases attended with serious aggravations. In this crime, therefore, as in burglary, the punishment, in practice attaches to the fortuitous incidents of the offence, and the inconvenience and injustice arising from the latitude of the law are nearly the same with respect to both offences. We propose to diminish the evil by the same means, which we have recommended in

burglary, viz. by deterring the aggravations, which in practice actually induce capital punishment, and incorporating them with the principal charge; and by classifying the compound offences thus formed according to their degrees of enormity. With this view, we suggest that the *capital crime* should consist of a *robbery*, or an attempt to rob, *attended by stabbing, cutting*, or *wounding*, or *doing actual bodily harm*, with any offensive weapon or instrument, to the person robbed. In the *second class* of punishment we place the offence of robbery, or the assault with intent to rob, when committed by numbers, or by persons armed with offensive weapons, or when attended with beating, striking, or any other personal violence. To *this class also* we transpose the offence of obtaining property by the threat of accusing another of any infamous crime. As this is an offence of the deepest malignity, we had considerable doubts whether it ought not to continue to be punishable with death; but after much consideration, we are inclined to think that, with reference to difficulties of proof, and the disposition of juries, the important object of certainty of punishment will be more readily attained, by placing it in the class of secondary crimes. We propose to place simple robbery and stealing from the person, without any peculiar aggravation, in the third class; and assaults with intent to rob, and demanding property by menaces or force with intent to steal, which, by the statute 9 G. 4, c. 74, s. 80, was here punishable by transportation for life,) we have placed in a fourth class, with a less degree of punishment. As connected with the crime of stealing, we have placed the plundering of ships in distress, &c. or goods belonging thereto, (which was capital here by s. 90, 9 Geo. 4, c. 74, and a very grave offence) in the second class."

I shall lastly remark upon the offence of wilfully setting fire to houses, and other buildings, &c., whether in the possession of the offender or of any other person, with intent to injure or defraud. This offence is capital by the statute 9 Geo. 4, c. 74, s. 114. By the 17th clause of the same statute, the acts of setting fire to, or in anywise destroying ships, whether complete or unfinished, and also of setting fire to them, or casting away or otherwise destroying them with intent to prejudice owners or underwriters, are also declared to be capital. The 123d clause empowers the Court to punish with transportation for 7 years or imprisonment for 2 years the offence of setting fire to any stack of rice, corn, gram, pulse, sugar cane, straw, hay or wood. Of the numerous capital crimes connected with the burning of houses or ships, created or continued by this statute, the great majority are offences against property, and danger to human life, does not form a necessary ingredient in any of them.

The Commissioners observed, "that with respect to the burning of buildings, &c. or mines, the capital punishment should be

repealed in all cases in which the act of burning is not committed in pursuance of a *direct intent to murder*, or where it is not attended with danger to life. The same limitation may, we think, be advantageously applied to the cases of burning or casting away ships. With respect to the burning of buildings, the offences to which we have assigned a place in the first class as property punishable with death, are merely such as would probably put life in peril. In the second class, we have placed the offence of setting fire to buildings, and of burning or destroying ships, where danger to life is not produced, and where the intent is to defraud and injure.

"The offence of riotously pulling down churches and other buildings, &c., which is capital by the 7th and 8th Geo. 4, c. 30, not being within the principle upon which we propose to retain punishment of death, we have placed in the second class."

The result of the whole as to capital offences is, that in the following cases, 14 in number, capital punishment is abolished.

1. Attempting to murder, when no injury inflicted.
2. Attempting to maim, disfigure, &c.
3. Robbery without wounding.
4. Threatening to accuse of an infamous crime.
5. Burglary without violence.
6. House breaking.
7. Stealing in a dwelling house, and putting in fear.
8. Stealing in a dwelling house to the value of 50 sicca rupees.
9. Plundering a wreck.
10. Arson, when life is not endangered.
11. Destroying ships, when life is not endangered.
12. Destroying wrecks.
13. Preventing escape from wreck.
14. Principals in the second degree and accessories before the fact, in the above felonies.

Capital offences that remain under 9 G. 4, c. 74, and act 31 of 1838.

1. Returning from transportation—s. 31, 9 G 4, c. 74, (though no longer capital in England by 4 & 5 W. 4, c. 67.)
2. Murder.
3. Attempt to murder, when injury inflicted.
4. Sodomy.
5. Rape.
6. Abuse of female children under 8 years of age.
7. Robbery with wounding.
8. Burglary with assault.
9. Arson where person within house, and life endangered.
10. Riotously destroying buildings.
11. Destroying ships, and life endangered.
12. Exhibiting false lights.

ADMIRALTY JURISDICTION

LAW OF PIRACY.

The King v. Tongul and others.

AND

The King v. Agapito de los Reis and others.

3D SESSIONS, 15TH AUGUST, 1836.

Mr. Justice Grant delivered his charge to the Grand Jury nearly as follows:—

Gentlemen of the Grand Jury.—I have put you to the trouble of assembling again, on account of two cases within the Admiralty jurisdiction of the Court: and which I had not previously an opportunity to bring to your notice.

I have been induced to ask you to attend this day, because the Admiralty jurisdiction of the Court is of a totally different nature from that which you have been exercising. It is founded upon different principles; it extends over different persons, and a different region; and therefore administers a different law. Amongst those persons who inhabit the same country, members of the same community, and submitting to the same government, there is an agreement, express or implied, that all should submit to the laws enacted by the authority, to whom it is entrusted to make laws for the community, and to the jurisdiction of the Courts appointed by the authority, to whom it is entrusted to appoint judges. As to foreigners who come within that territory, there is an implied agreement to submit to those laws and Courts, so long as they remain within the territory. The right to enforce compliance with this implied agreement, as well on the part of all citizens, as on the part of foreigners, is derived from the first law of nature,—self preservation. It is to maintain good order and good government. It is necessary to the peace and welfare of all societies. But the laws of a community, and the jurisdiction of judges appointed by a community, can extend no further than the territory belonging to such community. A citizen leaving his own country and going into the territory of another community, ceases to be subject to his native laws, and becomes, for a time, subject to the laws of such other community. In places not within the territory of any nation, the laws of no particular nation can prevail; and the citizens or subjects of any state are as free from subjection to its laws, and the jurisdiction of its Courts, in such places, as the citizens or subjects of any other state; because its laws do

not extend there, nor the jurisdiction of its courts. A law may be made, imposing obligations, or laying commands upon a citizen, or subject of a state, to be binding on him when out of the territory of the state, and this may be enforced on his return; because the obligation upon him, personally to yield obedience to the supreme authority of his country is not limited by place. But the law must expressly bear that obedience is to be paid to it without the territory, for generally the laws of a nation subsist only within its territory, and such law were an exception. When some of the citizens or subjects of a nation, establish themselves in an uninhabited country, or a country inhabited by savages, or barbarians having no established laws, they take possession of the territory for their nation or sovereign, and it becomes the territory of their nation, and is subject to its laws. But the ocean,—in law language, the high seas,—is said in the law of nations to be public, *i. e.* not belonging to any people or nation, but to the whole human race,—to be within the dominion of no one, except of God alone. The laws of no country, therefore, can prevail upon the high seas. Those, however, who traverse them, are not therefore subject to no laws; for they are subject to the laws of God, stamped by the Creator on the minds and hearts of all men. These are called the law of nature and nations, and are common to all nations of civilized men. By this law we are entitled to repel force and injury by force; for our own safety and that of others, to punish those who violate this law; and by this law murder and robbery are, especially forbid. Whosoever, therefore, upon the high seas, where there are no laws but the law of nature and nations, and no Courts nor lawful authority of any government of any nation, to exercise jurisdiction not equally possessed by all other governments and nations, and by all mankind, commits a crime forbidden by the law of nature and nations, may be lawfully there restrained and punished, by those who have been injured, and those who have witnessed the injury, acting on the principle of natural justice, and for the common safety: as men are by the law of nations entitled to do, in all places not under the dominion of any established government, nor under subjection to any fixed laws, and having no Courts of lawful jurisdiction. But the ocean being the common highway of all nations, it is the common interest of all nations, and the common duty of all governments, to protect those who traverse it, for the security of the traffic and intercourse in which all civilized nations are equally concerned, as in that of all things the most essential to their comfort and prosperity. All civilised nations, therefore, have agreed, that the vindication of crimes committed on the high-seas, *contra jus gentium*, i. e. against the law of nature and nations, ought not to be left to the sufferers, or to such of the companions of their voyage as might be inclined and able to assist them, for thus many grievous

offenders might escape, and the commission of great and frequent injustice, and many scenes of unnecessary bloodshed might ensue, contributing to augment the dangers of voyages by sea. It has, therefore, been agreed, by the common consent of all civilized nations, that certain Courts shall be established within each nation, having within its territories coasts and harbours of the sea, appointed by the sovereign authority within each nation, whose duty it shall be to administer, in a due course of judicial proceedings, that justice upon offenders, upon the unsubdued and unappropriated ocean, which the law of nature permits it to the person injured and the byestanders to administer, in all places unsubdued and unappropriated by any nation, in a manner more summary, and with greater danger of injustice and excess. The jurisdiction of these Courts is conferred by the sovereign power of each state. The right in each state to erect Courts with such jurisdiction, is no other than the right and duty derived from the law of nature to all men, to execute justice upon one violating the law of nature, in a place where he is subject to no other tribunal. These Courts are termed Courts of Admiralty. It follows, first, that their jurisdiction is not founded on any allegiance, permanent or temporary, to the sovereign of the country by whom they are appointed, and it therefore extends, by the law of nature and nations, over the subjects of all other countries. Secondly, it is not established for the protection of the subjects or citizens of the state, by which these Courts are appointed, but for the general protection of all persons passing upon the ocean, and therefore, it is immaterial to what country the person injured, belongs. Thirdly, it has nothing to do with place or territory, and therefore, it is immaterial, in what part of the expanse of the ocean the offence has been committed. The King of England claims a peculiar and exclusive right of jurisdiction, bestowed on the Admiral of England, over the British seas, as over a province, to maintain the peace in those seas, and to protect those who traverse them. This, which gave rise to much contest, and to a very learned disputation between two of the most learned men in a former age, we have no concern with here; but with that more extensive jurisdiction, common to the Courts of Admiralty of England, and of all other civilized countries, which the learned Selden describes 'as extending over the persons and things of the African, Mediterranean, Indian, or any other sea yet more remote; for the space,' says he, 'over which this sort of maritime jurisdiction extends is interminable.' Fourthly, the offences which may be tried by this jurisdiction, are those against the *jus gentium*, or the law of nature and nations. Amongst the most prominent of these are murder and robbery, which latter, when committed at sea, assumes the name of piracy. Fifthly, the law, which is to be administered, is not the law of England by an English Court of Admiralty; nor

the law of France by a French Court of Admiralty; nor the law of Spain or of Holland, by a Spanish or Dutch Court of Admiralty; but the *jus gentium* or *lex maritima*, the law of nations, or the maritime law, which upon questions and crimes arising upon the sea are the same. And by the *jus gentium*, or law of nations, is not meant that law with reference to the intercourse of nations or states in their political relations, peaceful or hostile, but with reference to the intercourse of individuals, and the duties of man towards man. That law which natural reason hath constituted, and which amongst all civilized nations is preserved and kept—and which is called the law of nations, as being that law whose use is common to all nations. Therefore, whether one who is guilty of a crime at sea, is tried in a Court of Admiralty of one nation or another, he is tried by the same law; nor is there any other difference, but the greater or less learning, the more or less perfect administration of justice, to be found in one court than in another, a difference which, from the imperfection of human nature, may be found in an equal degree between different courts of the same country. The law by which the culprit is tried is the same,—a law binding upon the whole human race,—a law deriving its source not from the institution of any one nation, but written by the finger of God upon the hearts of all men. Neither is this law left to the arbitrary interpretation of the judge, any more than the municipal laws of the country administered by the ordinary tribunals; but its doctrines are equally fixed as those of the common and municipal laws, by the common consent, and long and uniform usage of the civilized world, the decisions of the courts administering the law of nations, in the different countries of the civilized world, and the writings of learned men from the time of the Romans downwards, received as acknowledged authority by the concurrence of all modern nations. It is obviously of the utmost importance to the safety of those voyaging by sea, distant frequently from any port or shore, more distant usually from ports and shores belonging to their own country, that crimes committed on the seas, inconsistent with the safety of those who traverse them, should receive adjudication and punishment at the first port, and upon the first shore, at which the ship arrives. Nor could any thing be more dangerous to the safety of navigators, and consequently to the interests of commerce, than that men, who commit these great crimes of murder and robbery at sea, should go without question, if they could avoid returning within the limits of their native country. It is, therefore, necessary to the peaceful intercourse and beneficial commerce of mankind, that these offenders should be brought to trial wherever they are first laid hold of, and their offences judged of by the law which is common to all mankind.

Gentlemen, two sets of offenders will be brought before you. First—certain persons, inhabitants of a country, bordering upon

the straits of Malacca, accused of piracy, committed upon other persons, inhabitants of those shores. The legal definition of piracy, which is only a sea term for robbery, is an act of robbery and depredation committed on the high seas, which, if committed on land, would have amounted to felony there. Now, if the persons accused, belong to a different nation, from the persons who were despoiled, it is equally piracy as if they belonged to the same nation, unless it shall appear that the nations were at war.

The second is a case of a different description—that of a person said to be a settled and resident inhabitant of Calcutta, of what country a native, is not, that I am aware of, distinctly in evidence upon the depositions, but alleging himself to be a Spaniard; and of several persons regarding whose country I am not aware that any thing is said; and of one or two persons, who, from their names, would appear to be of English extraction; of several persons, apparently inhabitants of Calcutta, having joined the ship here, and in all probability many, if not all of them, born within the British dominions of India, and natural born subjects of the King of England; and one a Chinese, as is said, who also joined the ship at Calcutta.

If the country of the accused, therefore, made any difference, no proceedings could be had until the different places of their birth could be ascertained; and, this being done, they would probably have to be sent to different, and very distant places, to take their trials. But this I have said is not so; for, if they have been guilty of piracy, or of a crime, *contra jus gentium*, against the law of nations, committed upon the high seas, it is immaterial of what country they are natives,—of what sovereign subjects—they are amenable to the jurisdiction of this Court of Admiralty. These persons, upon the evidence taken before the magistrate, appear to be charged—the first, the gunner of the vessel, as a chief actor—the rest as aiding and abetting him, some of them by substantive criminal acts—in the murder of the captain and the chief mate, and in the taking unlawful possession of the ship, and of the property in her, the same being the property of Dutch merchants.

Now this is not murder simply, but murder with a piratical intent; for the taking possesssion of the ship was a direct act of piracy. It is, therefore, little else than a very usual case of piracy accompanied by murder; for piracy, in many, if not most cases, is accompanied with murder also. But murder itself is the highest crime by the law of nature and nations, and as such punishable by Courts of Admiralty.

Murder is defined in the law of nations, as in the English common law, homicide proceeding from malice. But there are some distinctions in regard to principal and accessory. By the maritime law, or *jus gentium*, those who command a murder,

and those who afford the means, and those who inflict the wound or injury, or wounds and injuries, which cause the death, are principals in the murder; but those who stand by, though in the sense of the law of England aiding and abetting, and so by that law principals in the second degree, are not principals but accessories by the law of nations. Thus, if a pirate at sea assault a ship, but by force is prevented entering her, and in the attempt the pirate happens to slay a person in the other ship, they are all principals in such a murder, if the common law hath jurisdiction of the cause, but by the law maritime, those who gave the wound only shall be principals, and the rest accessories; and so was determined by the Court of Admiralty of England in 28 Eliz. in the case of Ralph Williams, reported in Molloy *de jure Maritimo*. B. 1. ch. 4. s. 14.

Upon the question of piracy I cannot do better than direct your attention to Sir Charles Hedges' charge in 1696, to the Grand Jury at a Sessions of Oyer and Terminer and Gaol Delivery for the jurisdiction of the Admiralty of England, in which he lays down the doctrine of the law of nations:—

"Now piracy is only a sea-term for robbery, piracy being a "robbery committed within the jurisdiction of the Admiralty. "If any man be assaulted within that jurisdiction, and his ship "or goods violently taken away without legal authority, this is "robbery and piracy. If the mariners of any ship shall violently "dispossess the master, and afterwards carry away the ship itself, "or any of the goods or tackle, apparel or furniture, with a fe-"lonious intention, in any place where the Lord Admiral hath, "or pretends to have"—that is, justly pretends to have "juris-"diction, this is also robbery and piracy. The intention will, in "these cases, appear by considering the end for which the fact "was committed; and the end will be known, if the evidence "shall shew you what hath been done."

Gentlemen, I have thought it right to occupy so much of your time, in explaining to you the nature of the jurisdiction which you are now to be employed in giving effect to, and the law which it administers, because these cases within the admiralty jurisdiction of this court are of rare occurrence; and the law which governs them, is different from that administered in the exercise of the ordinary criminal jurisdiction of the court. I believe there have not been many cases for some time back tried under its admiralty jurisdiction.

Letter from the CHIEF JUSTICE *and* MR. JUSTICE MALKIN, *to the Secretary of the Board of Controul, transmitting* MR. JUSTICE GRANT'S *charge to the Grand Jury, and his Notes of the trial of Agapito de los Reis and others, for the consideration of the President and the Board of Commissioners for the affairs of India, dated 24th February,* 1837.

To the Secretary of the Board of Commissioners for the Affairs of India.

SIR,—We request you will lay before the Right Hon'ble the President and the Board of Commissioners for the affairs of India, the accompanying copy of Mr. Justice Grant's notes of a trial for piracy, which took place before him, at the third Admiralty Sessions of the Supreme Court in the last year. Mr. Justice Grant's charge to the Grand Jury, on the occasion, is also enclosed.

2. It will be seen by these notes, that Mr. Justice Grant is perfectly satisfied with the propriety of the conviction, and it is only owing to doubts entertained by the Chief Justice and Mr. Justice Malkin, on a question of law, that this case is submitted for the consideration of His Majesty's most Hon'ble Privy Council.

3. It is not necessary, that we should point out the precise jurisdiction of the Court of Admiralty at this place, it being clear, that if the High Court of Admiralty in England has jurisdiction over this case, that this Court has also jurisdiction.

4. It would appear from the report and the Judge's summing up, that some if not all the prisoners were aliens, and that the ship, in which the acts of piracy were alleged to have been committed, was a foreign ship. These facts must, we think, be so taken; though there was no express finding on the subject, as the learned Judge in his charge to the jury stated, that in his opinion it was immaterial to what country the ship belonged, or the persons by whom the acts of piracy were committed.

5. The doubt, which we entertain upon the direction of the learned Judge, and the legality of this conviction, is the following, whether the Court of Admiralty has power to try aliens for robbery committed at sea, on board an alien merchant ship, in which they are serving.

6. We presume the following propositions to be settled law:

1st. That the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other state, are subject to the jurisdiction of the state to which they belong.

2nd. That the jurisdiction, which the nation has over its public and private vessels on the high seas, is exclusive as respects offences against its own laws.

3rd. That if the mariners of any ship shall violently dispossess the mariners of any other ship, of the ship itself or of any of the goods, tackle, apparel or furniture, with a felonious intention, the offence, by whomsoever and against whomsoever committed, is in most and probably in all cases, against the law of nations, and may be tried in the competent tribunal of any country where the offender may be found, or into which he may be carried.

4th. That if the mariners of any English ship shall violently dispossess the master, and afterwards carry away the ship or any of the goods, tackle, furniture, &c. with a felonious intention, in any place where the Admiralty Court has jurisdiction, this offence is within the jurisdiction of the Court of Admiralty, and is correctly and technically described by the term of piracy.

7. It seems to us clear, on the principles we have stated, that in the case we submit for the consideration of His Majesty's most Honorable Privy Council, the prisoners are amenable to the jurisdiction of the state to which the vessel belongs, and that the crime they have committed is cognizable by that state.

8. The question seems to be, whether this can be considered to be an offence against the law of nations, and punishable as such by the Courts of all civilized countries.

9. Most of the difficulty of this question, if we are right in the doubts we entertain of the propriety of the conviction, in this case, arises from an ambiguity in the application of the word "piracy," which does not equally exist in that of the connected term "pirates," which seems to be used under more limitations. Pirates, according to Sir Leoline Jenkins, "are in "the eye of law *hostes humani generis* enemies, not of one "nation, or of one sort of people, but of all mankind, they are "outlawed, that is out of the protection of all princes, and all "laws whatsoever, every body is to be commissioned, and to be "armed against them as against rebels and traitors to subdue "and root them out."* It is of persons of this description that the same authority states "that all nations and sovereign "princes, that meet with them, have a just and competent au-"thority to execute law upon them." Sir William Scott, in his judgment in the case of the Le Louis, 2 Dodson, 247, in shewing that the dealing in slaves is not to be considered as piracy, according to the existing laws of nations and states. "In truth,

* See Sir Leoline Jenkin's charges at the Admiralty Sessions, held at the Old Bailey.

"it wants some of the distinguishing features of that offence. "It is not the act of freebooters, enemies of the human race, "renouncing every country and ravaging every country in its "coasts and vessels indiscriminately, and thereby creating an "universal terror and alarm."

10. As far as we can discover, the foundation of the general jurisdiction is uniformly laid, as it clearly is in the passages above quoted, in the character of the parties, not in the character of the offence. And all statutes made for the punishment of parties, adhering or giving assistance, (furnishing ammunition, &c.) to pirates, seem in like manner to treat them as a distinct and known class of offenders, and cannot, we apprehend, be applied to persons giving the same aid to all individuals, who have happened to commit a single act of robbery on the sea, although in the phraseology of our law, that act being there committed, is termed an act of piracy.

11. The manner in which pirates may be dealt with, appears to depend entirely on similar considerations. They are frequently said to have, as it is quaintly termed, *caput lupinum*, and the right of any person to put them to death, is not limited, as in other cases, to circumstances where they cannot be otherwise prevented from the commission of crime, or where the death occurs in an endeavour for their apprehension; but it may legitimately be done as a punishment, if there is not the opportunity of inflicting punishment in a more regular manner. See Molloy de Jure Maritimo, Book I. c. 4, passim, but especially sections 12, 13. In the same manner, we apprehend, that although parties can only be punished judicially, for specific acts of piracy, yet the commissioned vessels of any state may rightfully attack and destroy, or capture, piratical vessels without waiting to ascertain the commission of such specific acts, if they have without them sufficient evidence of the character of the vessels. "Against pirates and such as *live* by "robbery at sea, ("*qui piraticam* EXERCENT," are the words of "Grotius in the like case "De jure bell. et pac. lib. II, c. 20, s. "40, 3,") any prince hath power to make war, though they are "not subject to his Government." Molloy, Book I. cap. 4, s. 1.

12. It is to say the least of it, consistent with this view, that on trials for piracy, evidence has been received, which would not be admissible in common cases. Thus in Rex. v. Davison and others, 13, Howell's St. Tr. 451, where some of the parties concerned were the sailors of *another* ship, who took forcible possession of that which was the subject of the indictment, and where, therefore, no doubt could exist as to the *felonious* character of the taking. Lord Holt received evidence of a long series of subsequent piracies, and told the jury in his summing up, p. 478, that the taking "is a piracy, that is "manifested by the use they did put her to; for they did

"afterwards commit several other piracies with her." No evidence of this kind, it will be observed, was given, or apparently could have existed in the present case.

13. On the whole, it seems to us, that the acts, for which these prisoners were tried, although piracy in the phraseology of our law, are not of that class or description, which the necessity of the case calls upon all nations to repress and punish; that the parties committing them, were not of that class of offenders, against whom all nations are at war, and in whose apprehension and punishment they are equally interested. The offence may be piracy by the laws, or in the terms of law, of the particular state to which the mariners and ship are subject. But all offences described as piracies, do not necessarily stand in the same footing. Thus the slave trade, though prohibited by the municipal laws of most nations, and declared to be piracy by the statutes of Great Britain and the United States, is not such by the general international law, and its interdiction cannot be enforced by the exercise of the ordinary right of visitation and search. Piracy, as defined by the law of nations, clearly cannot be extended to offences which are made piracy by municipal legislation, can only be tried by that state within whose territories, jurisdiction, or on board whose vessels, the offence thus created, was committed.

14. The doubt which we entertain as to the jurisdiction of the Court, is further strengthened by there being, as far as we are aware, no case on record like the present, and on this ground, the learned Judge, who tried the case, thought it his duty to suspend execution of the sentence until the case could be considered by all the Judges.

15. We would refer as bearing on the question, we have submitted for the consideration of his Majesty's most Hon'ble Privy Council, to the case of the King *v.* Depardo, 1 Taunton, p. 31, where the late Lord Tenterden, then Mr. Abbott, as Counsel for the Crown, is reported to have said that the commission, under which the Courts of Admiralty now sit, would not enable them to try an alien for the murder of an alien, committed in a foreign ship: and to the cases of the United States *v.* Clentook, Wheaton's Reports, vol. 5, and the United States *v.* Pirates in the same volume of the same reports, where, according to Mr. Wheaton's note of these cases (to which alone we are able to refer) in his Elements of International Law, it has been held by the American tribunals, "that crimes of "murder and robbery committed by foreiguers, on board a "foreign ship, on the high seas, are not justiciable in the "tribunal of another country, than that to which the vessel "belongs; but if committed on board a vessel, not at the "time belonging, in fact as well as right, to any foreign power, or "its subjects, but in possession of a crew acting in defiance of

"all law, and acknowledging obedience to no flag whatsoever, "these crimes may be punished under the law of nations in the "courts of any nation having custody of the offender." See also the case of the Le Louis, 2 Dodson, 210, already referred to.

16. If his Majesty's most Hon'ble Privy Council shall be of opinion, that this Court has not jurisdiction in this case, we most humbly submit for their consideration, the propriety of recommending His Most Gracious Majesty, to grant his free pardon to these prisoners.

17. Mr. Justice Grant, we beg to state, entirely concurs in the propriety of submitting this case to the consideration of his Majesty's most Hon'ble Privy Council, though he retains his opinion as to the jurisdiction of the Court, and the propriety of this conviction, and will state the grounds of it more fully than in his charge and summing up, in a separate letter.

We have the honor to be, Sir,

Your most obedt. and humble Servants,

(Signed) EDWARD RYAN.

" B. H. MALKIN.

Court House, Calcutta,
24th February, 1837.

Letter from MR. JUSTICE GRANT, *to the Secretary of the Board of Controul, 4th March,* 1837.

To the Secretary of the Board of Commissioners for the Affairs of India.

Calcutta, 4th March, 1837.

SIR,—In reference to the letter of date the 24th of February, instant, addressed to you by my learned colleagues, on the Bench of the Supreme Court of Judicature here, Sir Edward Ryan, the Chief Justice, and Mr. Justice Malkin, relating to a trial for piracy committed on board the ship *Sumatra*, had before me, at the third Admiralty Sessions in the last year, it is my duty to state to you very shortly, for the information of the Right Honorable the President and the Members of the Board of Commissioners for the affairs of India, the circumstances which attended that trial, and the grounds of the opinions I delivered in my charges to the grand and petit juries, in order that the same may be laid, by the President of the Board, before his Majesty, and that I may stand in his Majesty's most gracious opinion, free from the suspicion of having acted judicially in a matter of such great importance, without a due consultation being previously had among the Judges—or of having pronounced,

without the knowledge and assent of the other Judges, and without qualification, opinions in which I differed from the majority of the Court.

I beg to say, that, although I was, and am satisfied, with the propriety of the conviction, it is not only owing to the doubts entertained by the Chief Justice and Mr. Justice Malkin, that I have concurred in the propriety of submitting the case for the consideration of his Majesty. I was always of opinion, that although this case was, in my apprehension, within sufficiently certain and very important principles of the *jus gentium*, administered by English as by other Courts of Admiralty, yet as it was not precisely parallelled in all its circumstances by any case recorded as adjudicated, and as it involved the capital punishment of subjects of foreign sovereigns, who might possibly demand explanations thereupon from his Majesty's government, it was fitting that, before carrying the sentence into execution, the case should be submitted to his Majesty.

To this opinion the doubt entertained by the other Judges added a reason, which would have alone been sufficient for so submitting it.

I beg leave also to state, in reference to the last paragraph of the letter of my learned colleagues, that, although I entirely concur in the propriety of submitting this case to the consideration of his Majesty, still retaining my opinion as to the jurisdiction of the Court, and the propriety of the conviction, I do not concur in any opinion upon the propriety of submitting it to the consideration of his Majesty's most Honourable Privy Council, thinking that, there being no appeal, it is a case in which the Privy Council can offer no judicial opinion, and that being a question of the mere exercise of a prerogative of the Crown, more peculiarly flowing from the personal grace and mercy of the King, it is for his Majesty, upon the advice of his confidential minister in this department, to command the further advice of such of his Counsellors, or of the law officers of his Crown, as in his grace and wisdom he shall deem expedient.

I have stated my opinion upon this matter to the Chief Justice, but have been informed by him, that the form he has adopted is that adopted in former cases by this Court. I have therefore not thought it necessary to decline to sign two other letters in the same form, transmitted to you from this Court, although I think it right to take this opportunity of stating, that I do not concur in the opinion of its propriety.

The circumstances, which preceded the trials on the Admiralty side of the Court, were these. The ordinary sessions for the trial of criminal cases are taken by the Judges in succession, all the Judges being present at the charge delivered to the grand jury, and one Judge only presiding at the trials. Upon this occasion the presiding at the trials devolved upon me. The

same grand jury is returned for both sides of the Court; but I charged them in the presence of the other Judges upon the ordinary criminal matters only, the cases on the Admiralty side not being ready, and it being an entirely different jurisdiction.

When these were ready, the Judges met, and I was made aware that doubts were entertained by my colleagues upon the jurisdiction, of the Court in the *Sumatra* case.

It unfortunately so happened that the Chief Justice, at this time, was unwell, and unable to undertake the fatigue of a trial, so that there could not be a full bench. But being all of opinion, that, if a conviction took place, judgment should be respited, and the case submitted for consideration to his Majesty's government, along with the doubts of my learned colleagues, if they should continue, we agreed, that it would be better for me to charge the juries according to my own view of the law, and to make no mention of the doubts entertained by the other Judges.

From the proposition stated in the letter of my learned colleagues; "That the publick and private vessels of every nation "on the high seas, &c., are subject to the jurisdiction of the "state to which they belong," if it be meant to affirm, that those on board merchant vessels, belonging to the subjects of a particular nation, are subject to the jurisdiction of the courts of that nation, in respect of offences committed by them, while sailing on board such vessels upon the high sea, by virtue of the vessel belonging to subjects of that nation, in any manner in which the same persons sailing there in merchant vessels belonging to any other nation, and committing the same offences in the same place, would not be so subject, I am under the necessity of humbly dissenting—for crimes are local, and no court has jurisdiction in virtue of the authority conferred by the nation, which has created it, over crimes committed in any *place*, which is out of the territory of that nation, and a ship is not in any legal sense a *place*, but a *machine*, which, when, sailing, is perpetually changing its *place*, the place in which those who sail upon it are existing, and in which their acts, while so sailing, are performed, being that part of the surface of the sea, in which the ship at the time is swimming, and which, if it be part of the *altum mare*, is incapable of appropriation by any state; for, *mare in proprium jus abire non potest*, (a) *et ita est commune, ut in nullius dominio sit, nisi solius Dei*, (b) a general proposition which the learned Selden does not deny. Indeed a temporary *imperium in portionem maris* may be acquired, during the temporary and *de facto*

(a) Grot. Jure Bel. & Pac. Lib. II. c. 2. § 3. p. 1.

(b) Grot. mare liberum, c. 5.

military occupation of a part of the surface of the sea by the commissioned ships of war of a sovereign, *ratione personarum* of those who man the fleet, (*a*) and then it is not the *ships* which constitute the *places* in which the *imperium* of the sovereign subsists, but the *portion of the sea* which those ships occupy, *si classis qui maritimus est exercitus aliquo in loco maris se habeat.*

But if ships, because they belong to subjects of England, do therefore constitute *places*, subject to the jurisdiction of the courts of England, then all acts performed on board them, must be judged of by the same law, being the *Lex Loci*, in order to decide upon their guilt or innocence. But this is not so; for although if an alien enemy and an Englishman were to commit a robbery together in England, it would be a robbery in both, yet if an alien enemy and an Englishman, sailing together in an English ship, were to commit a robbery upon other Englishmen, sailing in another English ship at sea, it would be robbery and piracy in the Englishman, and not so in the alien enemy, but the depredation of an enemy to be judged of by the laws of war. (*b*)

I apprehend there is a marked and established difference between "the publick and private vessels of a nation," meaning by publick vessels, vessels in the Sovereign's employ.

Those serving on board ships of war of a Sovereign, and other ships, as merchant ships, hired by him for the publick service, which, while in his service, are to be reputed his—are not amenable to foreign Courts of Admiralty, for excesses or crimes committed upon the high seas, (*c*) but to the courts of their Sovereign only—neither can such ships be lawfully confiscated by such foreign courts. (*d*) But those on board ships not commissioned or hired by the Sovereign, are amenable to foreign Courts of Admiralty, as well as to the Courts of Admiralty of their own Sovereign, for such excesses and crimes; and such ships may be confiscated by any of such Courts of Admiralty, where the persons and ships are apprehended, and may be there sold, in order to repair the damages of such as have suffered. (*e*)

Neither am I able to subscribe to the accuracy of the position, "That the jurisdiction, which a nation has over its publick and private vessels on the high seas, is exclusive as respects offences against its own laws." For I apprehend that

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(*a*) Grot. Jure Bel. & Pac. Lib. II. c. 3, § 13.

(*b*) Molloy de. Ju. Marit. B. I. c. 4, § 8.

(*c*) 2 Wynne's Life &c. of Sir L. Jenkins, 714-15

(*d*) Ibid.

(*e*) Ibid.

the courts of no nation have any jurisdiction over persons sailing on board its private vessels, in respect of offences committed in or from those vessels upon the high sea, *against its own laws*—if by its own laws be meant what are commonly called its *municipal laws*, or more correctly the *jus civile* of that nation—but in respect of offences committed *contra jus gentium* only. And such jurisdiction must be exercised by the course of the civil or imperial law, (*a*) and the judgment must be *secundum leges maritimas*, (*b*) and to the effect and with the consequences ascribed to the offence by the *jus gentium* or *lex maritima*. (*c*) But there may be a particular law expressly enacted by the sovereign of a particular nation, prohibiting under penal sanctions his subjects from committing upon the high sea, acts which are not offences *contra jus gentium ;* and in that case the Courts of that Sovereign have exclusive jurisdiction to try his subjects for committing such acts. Or there may be a particular law expressly enacted by the Sovereign of a particular nation, appointing more grievous punishments to be inflicted upon his subjects for offences on the high seas *contra jus gentium* than are awarded for such offences by the *jus gentium ;* and in this case, his Courts have exclusive jurisdiction to award such increased punishments upon his subjects, but have no exclusive jurisdiction to try his subjects for committing such offences. (*d*) But such particular laws are exceptions from the general rules of law, and are binding upon the subjects of that sovereign only ; but are altogether void as respects the subjects of other nations (*e*) although they be sailing on board the ships of that particular nation, (*f*) and in all foreign Courts of Admiralty (*g*)

It is also necessary that I should express my dissent from the limitation annexed by my colleagues to the proposition "that "if the mariners of any ship shall violently dispossess the mariners "of any other ship, &c. with a felonious intention, the offence by "whomsoever and against whomsoever committed, is against the "law of nations and may be tried in the competent tribunal of any "country where the offender may be found, or into which he may "by carried," viz. that this is so "in most and probably in all cases"—and I cannot but consider it a matter of extreme danger to intimate that it is within the verge of possibility that any crime, contrary to the natural duties of man and the peace of society, can exist, which is not contrary to the law of nations, and when

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(*a*) 28 H. 8. c. 15, Pream. Moor 756. pl. 1044. 3 Inst. 112. Fost. C. L. 288.
(*b*) 1 Hale's P. C. 500. R. *v.* Depardo, 1 Taunton 29.
(*c*) 2 Dods 367. Molloy de Ju. Mar. B. I. c. 46. § 14. William's case.
(*d*) 1 Dods. 298.
(*e*) Ibid.
(*f*) 3 Inst. 113. Br. Crim. pl. 118. Ej. Treason pl. 16.
(*g*) 2 Dods. 255.

committed upon the high seas, may not be visited with adequate punishment by all Courts of Admiralty—and I must with deference say, that I cannot reconcile the limitation thus suggested with the meaning of the term *law of nations*, as I apprehend it is used, in the disquisitions as well of English lawyers, as of civilians.

I humbly conceive that the *law of nations* has no other meaning, in these disquisitions, than the term *jus gentium*, as defined in the civil law viz. the *law of nature, as applicable to man*.

Thus Lord Coke " If a foreign ambassador committeth any " crime which is *contra jus gentium*, as treason, felony, adultery, " or any other crime, which is against the *law of nations*, he " loseth his privilege, and may be punished as a private alien; " and so of contracts that be good *jure gentium*, he " must answer here; But if any thing be *malum prohibitum* " by any act of Parliament, private law, or custom of this " realm, which is not *malum in se jure gentium*, an ambassador " residing here shall not be bound by any of them." (*a*) And in the account given by the same eminent English Common Lawyer from the bench, of the same discussion which is related in his 4th Institute, of which the passage I have cited is a part, he substitutes the words *law of nature*, for the words *jus gentium*, as signifying the same thing, (*b*) and upon a subsequent occasion, in giving an account of a subsequent conference between the Judges of the common law and the civilians, arising out of the same case, he again uses the terms *jus naturæ* and *jus gentium* as convertible. (*c*)

All Judges and lawyers describe the Courts of Admiralty as Courts administering, and whose duty it is to administer, between private litigants, the *law of nations*. (*d*) Thus it is laid down by Sir Leoline Jenkins, that it is *de jure gentium* that a defendant be not concluded before he be heard (*e*)—that it is not necessary *de jure gentium* to call persons, who, as the case stands, have no defence to make—but it is necessary *de jure gentium* to cite the parties interested—and there can be no sentence where there is no citation. (*f*) These are evidently rules of natural justice, or, of the law of nature between man and man, not concerning the intercourse of nations. And accordingly, when Lord Stowell means to confine his meaning to the application of the

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(*a*) 4 Inst. 153.
(*b*) 3 Bulst. 28.
(*c*) Ibid 29.
(*d*) 1 Dods. 298.
(*e*) 2 Wynne's Life, &c. of Sir L. Jenkins, 760.
(*f*) Ibid, 761 & seq.

jus gentium to the intercourse aud reciprocal rights of nations, he styles it correctly, the *publick law (a)*.

The instances given by Roman Lawyers of the duties prescribed by the *jus gentium*, are, "*veluti, erga deum religio—ut parentibus et patriæ pareamus—ut vim, atque injuriam propulsemus, —nam jure hoc evenit, ut quod quisque obtutelam corporis sui fecerit, jure fecisse existimetur, et. cum inter nos cognationem quamdam natura constituit, consequens est, hominem homini insidiari nefas esse. (b)*" These surely are laws prescribed for the observance of individuals in the intercourse of life. And the distinction between the *jus civile* and *jus gentium*, is thus drawn in the Institutes. *Jus autem civile a jure gentium distinguitur, quod omnes populi qui legibus et moribus reguntur, partim suo proprio partim communi omnium hominum jure utuntur, nam, quod quisque populus ipse sibi jus constituit, id, ipsius proprium civitatis est, vocaturque* JUS CIVILE, *quasi jus proprium ipsius civitatis : quod vero naturalis ratio inter omnes homines constituit, id apud omnes peræque, custoditur vocaturque* JUS GENTIUM, *quasi, quo jure omnes gentes utuntur. (c)*

The refinement, by which the *jus naturale* is in some places distinguished by the Roman Lawyers from the *jus gentium*, is well known "*jus gentium est, quo gentes humanæ utuntur quod a na-*
"*turali recedere, facile intelligere licet ; quia illud omnibus anima-*
"*libus hoe solis hominibus inter se commune sit.*" *(d)* But this refinement is abandoned in many places by the Emperor Justinian, and the Roman Lawyers whose writings he has digested, and the terms *jus naturale* and *jus gentium* are applied by them indiscriminately to signify the laws prescribed by nature to man—conferring and regulating his natural rights and prescribing his natural duties, and in no instance, that I am aware of, is the term *jus gentium* otherwise applied by them.

So the modern civilians. JUS GENTIUM, *non ex institutis populorum æstimandum est, sed ex eo quod justum esse ipsa naturalis dictat ratio, id est, insita animis hominum notitia honesti, et turpis, justi, et injusti. (e)*

NATURÆ NOMINE INTELLIGO JUS NATURALE VEL GENTIUM. *(f)*

Homicidia et adulteria, et furta, et alia scelera quam plurima damnat quidem JUS NATURÆ AC GENTIUM. *Sedet, prohibet,* JUS

(a) 2 Dods. 243.
(b) Dig. L. 1. T. 1. l. 1, 2, 3.
(c) Justin. Inst. L. 1 T. 2 §1.
(d) Dig. l. 1, T 1 l. 1.
(e) Vinnius ad. Inst. L. 1 T. 11.
(f) Cujacii. T. 2, 583 a.

CIVILE (*quod quis-que populus sibi proprium constituit*) *atque ita dispositionem* JURIS NATURÆ VEL GENTIUM *sua confirmat autoritate.* (*a*)

In jure nostro, JUS NATURÆ *et* GENTIUM *sæpius confunditur, ac promiscuè usurpatur.* (*b*)

It is this law which Courts of Admiralty administer, in deciding upon the rights, and the crimes of those individuals, who are brought before them—nor in such decisions have they any concern with the modifications of that law, which may affect its application to the intercourse and relations of different nations, which some modern writers have thought fit to call the *law of nations*, as distinguished from what they call the *law of nature*, namely the *jus gentium* of the civilians.

Neither can I agree that the question here is, "whether the "offence, of which these unhappy men have been convicted, can "be considered to be an offence against the *law of nations*." Treason, felony, adultery, in short, all crimes, which are *mala in se*, are declared by Lord Coke, as well as by the civilians, to be *contra jus gentium*. Upon this I humbly apprehend there can be no manner of doubt. The only question is, whether being against the law of nations, the offence, committed in that place, is punishable by all Courts of Admiralty, being the Courts in which civilized nations administer the *jus gentium*, in cases happening *super altum mare*—the case being in this instance, an offence committed *super altum mare* on board a private ship, neither the private ship, nor the offenders, belonging to the country, where the Court that tried the offence was sitting.

It is also necessary for me to state, with the humility which becomes me, when I differ from both of the learned Judges, with whom I am associated, that I am unable to discover any ambiguity in the application of the word *piracy* in the law. I need not, therefore, say, that I do not conceive it to be more ambiguous than the word *pirates*. And it would indeed be lamentable, and almost inconceivable, if, at this time of day, the denomination were ambiguous of a crime, which is capital by the law which is common to all civilized nations. I am aware, that, as there are upon the land solitary robbers, who attack single passengers upon infrequent occasions, and also bands of freebooters who daily rob in large bodies, rendering entirely insecure the countries they infest, so there are robbers upon the sea of different descriptions, some upon a smaller, some upon a larger scale. Nevertheless, I apprehend, that, as he who commits robbery is a robber, so he who commits piracy is a pirate. Neither do I apprehend, that

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(*a*) Voet. ad Pand. L. 1, T. 1, § 20.
(*b*) Ejusd. L. 47, T. 2, § 1.

the frequency or infrequency of the acts committed, or the greater or smaller number of those in company with whom they are committed, however, much it may increase the atrocity of the criminal, or the danger of the crime, can alter the legal description of either the crime or the criminal. No man is punished because he may be justly described as a robber, or a pirate, or a thief; but, because he has committed an act of robbery, or piracy, or theft; and I humbly apprehend, that there is as little ambiguity in the legal definition of that which constitutes an act of piracy, as of that which constitutes an act of robbery, or theft. A pirate is defined by Serjeant Hawkins thus "A "pirate is a person who commits any of those acts of robbery and "depredation upon the high seas, which, if committed on land, "would have amounted to felony there," *(a)* and by Lord Coke such acts are termed piracy and robbery upon the sea; *(b)* and in Marsh's case, he says, "By statute 28, H. 8, c. 15, all "robberies done upon the sea, shall be tried upon the "land—but then the same ought to be a robbery." *(c)* And, if a robbery at sea, it must be a piratical robbery, i. e. a piracy, for it cannot be tried, unless the indictment states it to have been committed both *felonicé et* PIRATICE. *(d)* And whatever may be the rhetorical description of persons leagued together for the commission of piracy, which grave writers and learned Judges may have indulged in, I apprehend, the definitions of piracy, and of a pirate, whenever such definitions have been attempted, are in conformity with that of Lord Coke and of Hawkins: "Now, as to the nature of the offence," says the learned Judge in the case of Major Bennet, "Piracy is a robbery com-"mitted upon the sea, and a pirate is a sea thief *(e)*." "Now pira-"cy," says Sir Charles Hedges, charging the grand jury in the case of Dawson and others, in the presence of Lord Chief Justice Holt, Lord Chief Justice Treby, Lord C. B. Ward, Rokeby, Turton, and Eyre Justices, and Powis B. and three learned Civilians, his colleagues in that commission "is only a sea term for "robbery. Piracy being a robbery, committed within the ju-"risdiction of the admiralty. If any man be assaulted within "that jurisdiction, and his ship or goods violently taken away "without legal authority, this is robbery and piracy." *(f)* So it is said by Lord Stowell, that piracy, in its simple and ordinary sense, as understood in the general law of nations, consists in an unwarrantable violation of property committed upon the high seas. *(g)*

(*a*) 1 Hawk. P. C. c. 37, § 4.
(*b*) 3 Inst. 112.
(*c*) 3 Bulst. 27.
(*d*) Hawk. P. C. c. 37. § 15.
(*e*) 15 How. State Trials, 1231.
(*f*) 13 How. State Trials, 454.
(*g*) 2 Dods. 370.

But, as there may be *professed robbers* on the land, so, no doubt, there many be *professed robbers*, or professed *pirates* upon the sea, and with those, as Lord Stowell says, " there is no state of "peace. They are the enemies of every country, and at all " times." But this sort of piracy,—of professed rovers and robbers upon the sea, which was the original description of pirates, " —piracy in its simple and original form,"—says Lord Stowell, " is no longer in vogue.*(a)* Circumstances," which he suggests, " have" he says, " cleared the ocean of this nuisance, and the " records of our own criminal courts show, that piracy is become " a crime of rare occurrence, hardly visible for above a century " past, but in the solitary instances of a few obscure individuals. " Pirates, *in the ancient meaning of the term*, are literally *rari* " *nantes* on the high seas." *(b)* But it does not, therefore, seem to follow that those, who commit piracy of an humbler and less adventurous description, are not thereby rendered pirates in the sense of the law ; and, when a learned civilian offered to the council, and the civilians there assembled, as a reason why those accepting pretended commissions to fit out private ships of war from James II., after his abdication, could not be deemed pirates, for that a pirate was *hostis humani generis*, and they were not so, the argument is said by Dr. Tindall to have excited a smile, and the doctor in his essay concerning the law of nations, adds : " *Hostis humani generis*, is neither a definition nor even a des- " cription of a pirate, but a rhetorical invective to show the " odiousness of that crime." *(c)*

The crime committed by the unhappy men tried before me, was in all respects the same with that described by Sir Charles Hedges, and laid down by him in the case of Dawson and others, which I have mentioned, with the concurrence of Lord Holt, who was a good civilian as well as an admirable common lawyer, and of the other learned persons I have mentioned, as constituting piracy. " If the mariners of any ship," says that learned Judge " shall violently dispossess the master, and afterwards " carry away the ship itself, or any of the goods, or tackle, " apparel or furniture, with a felonious intention, in any place " where the Lord Admiral hath, or pretends to have jurisdic- " tion, this is also robbery and piracy ;" and the learned Judge proceeds to describe and define the jurisdiction of the English Court of Admiralty for the trial of piracy, such as he had described that crime, as follows. " The King of England hath not " only an empire and sovereignty over the British seas, but also " an undoubted jurisdiction and power, in concurrency with other " princes and states, for the punishment of all piracies and

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(*a*) 2 Dods. 374.
(*b*) Ibid 375.
(*c*) Tindall, pp. 25, &c.

" robberies at sea, in the most remote parts of the world, so that " if any person whatsoever, native or foreigner, christian or " infidel, Turk or Pagan, with whose country we have no war " with whom we hold trade and correspondence, and are in " amity, shall be robbed or spoiled in the narrow seas, " the Mediterranean, Atlantic, Southern, or any other seas, or " the branches thereof, either on this side or the other side of " the line, it is piracy within the limits of your enquiry, and " the cognizance of this court." To that if the piracy committed had consisted in despoiling any person of any nation whatsoever, with whom the King of England had no war, in whatsoever sea, by violently dispossessing him, the master of a ship, and carrying away the ship itself, or any of the goods or tackle, &c. with a felonious intention, it had been an act of piracy, which that English Court of Admiralty had jurisdiction to try, in common with the Courts of Admiralty of any other prince or state, within whose territories the offenders then standing upon their trial had been apprehended.

I am not aware of the law so laid down, having ever been called in question, nor have I been able to discover any ground in the *jus gentium* or *lex maritima*, from which the jurisdiction of all Courts of Admiralty is derived, upon which it can be so.

And the case of Captain Bienvenue, which was that *of a Frenchman commanding a French merchant or private ship*, charged before *the Admiralty of England*, upon the information of his crew, of " piracy, murder and other very " high misdemeanours," committed on board that ship, upon the high seas, appears to me to have been, in many material points, a parallel case with that of the persons in question tried before me; except that the crimes against the *jus gentium*, with which he stood charged as committed within the ship in which he sailed, were murder, and acts of violence committed upon the persons of those sailing with him in the same ship, instead of robbery.

On the 9th of November 1672, Sir Leoline Jenkins reports to the King upon an address of Captain Bienvenue's, which he annexes, that this person was then proceeded against, and his cause ready for hearing in the Admiralty, the charge against him being for the crimes abovementioned, and Sir Leoline says, " He doth not offer his defence in the proper place, I mean " in the Court where he is proceeded against. If he please to " come at any time he shall be fully heard there, and, if sentence " do go against him, he hath his remedy by way of appeal " to your Majesty in Chancery; but to pray that the trial of this " crime be remanded into France, is, as I humbly conceive,

"against your Majesty's prerogative, and the course of the law "of England (*a*).

On the 21st of April 1673, Sir Leoline Jenkins reported to the King, in obedience to his Majesty's order in Council, "the "chief grounds and reasons of his sentence and condemnation "given against the ship and goods of Captain Bienvénue, ar-"rested, as *bona piratorum*, at Kinsale in Ireland," he states the charge in this "cause of piracy" proved against him to have consisted of several heads, which he sets down in their order. Of these, some are the robbery at sea of three French fishermen, the chase of one English ship, and capture of another. But the 6th is "that he beat an Englishman "(one of his crew) in so cruel a manner, that it caused his "death." The 7th, that the carpenter, being sick and languishing in bed, was threatened to be cut in pieces, or thrown overboard, and forced to rise out of bed and work, whereas he fainted, "and died the next day." Then follow other charges of barbarity exercised upon persons on board his ship.

"These," says Sir Leoline, "were, under your Majesty's cor-"rection, the grounds of that sentence, which I did pronounce." He then says, in case of the defendant appealing, it will be for the Judges of appeal to determine "whether your Judges be "obliged, *ex officio*, in a case as this is, to waive the cognizance "of it, and to send it to be tried in France—which I must con-"fess, I did not do, as knowing no law, custom or treaty, that "directed any such *renvoy* or dismission as is desired." (*b*)

In the case of a *Dutch Caper, on board of which* violences, menaces, and torture had been inflicted on persons, Englishmen, who had gone, or been taken on board, Sir Leoline Jenkins states in a letter to the Commissioners of the Admiralty, that the regular way of punishment is, at a sessions of Oyer and Terminer for the Admiralty (*c*).

If an act of robbery upon the high sea be not a *piracy*, it cannot be tried any where in England; for the common law shall not try it, because the offence was not committed *infra corpus comitatis*. (*d*) and it cannot be tried before the Court of Admiralty, unless the fact were committed *piratice*. (*e*)

I shall conclude this letter with observing, that I cannot agree in thinking "that the acts for which these prisoners were tried, "although piracy in the phraseology of our law, are not of

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(*a*) 2 Wynne's Life of Sir L. Jenkins, 772.
(*b*) Ibid.
(*c*) Ibid 774.
(*d*) 1 Hales. P. C. 426.
(*e*) Hawk, c. 37.

"that class, or description which the necessity of the case "calls upon all nations to repress and punish." I can conceive nothing that could be more dangerous to the safe and peaceful navigation of the seas, and the interests of commerce, in these parts, in which the British nation has so great an interest, and which she is especially bound, by her commanding position, to protect—as an opinion, that her Courts of Admiralty could not punish for murders and robberies and other crimes against the common laws of mankind, committed upon these seas, by persons coming, or brought within her ports, of whatsoever nations the offenders might be natives, or against whomsoever, or on board whatsoever ship, such offences might be committed.

If a right of renvoy existed, to whom should they be sent for trial? To an Arab petty sovereign, or to the distant and scarcely less doubtful justice of the Chinese? Or to a Malay Chief, with whom piracies at sea form part of the ordinary occupation of his people, and of the revenues of his principality?

But it is established that by the law of nations no *renvoy* subsists; (1) and if the Court of Admiralty cannot try, the magistrate cannot lawfully apprehend—nor the Government secure, in order to such renvoy by courtesy.

Thus this port might become the sanctuary of barbarous Arabs and others as barbarous as they, who might arrive here in ships of their country, of which ships and their cargoes they had robbed the native owners, having mutinied and murdered the native Captains, and might here, under the protection of the English laws, enjoy the fruits of the most atrocious crimes, committed upon seas, which by the law of nations, are under the protection of all civilized sovereigns, and, by the circumstances of his position, more especially under that of the King of England.

I have the honour to be Sir,

Your most obedient and humble Servant,

(Signed) J. P. GRANT.

NOTE.

Bynkershoek having stated as a general proposition "Si quis quemquam "exterus nostros sit deprædatus, et capietur, non dubitaverim quin apud nos recte "accusari et puniri possit, non tantum, si in rapiendo captus, et ad nostrans-"latus sit, sed et si alia quacunque occasione apud nos deprehendatur;" adds "Et "nemo contradixerit, si, sine codicillis Principis sui, in nostros rapinam egerit; "sed, si ex mandato cujus finesegressus dicitur simile quid fecerit, magis dubi-"tari posset." And he mentions an occasion when such a question arose between

(1) 1 Wynne's Life of Sir L. Jenkins, 714, 715, 772, 774.

CASE.

Respecting the jurisdiction of the Supreme Court of Judicature at Calcutta, in case of Piracy, committed by Aliens, in a foreign ship, within the limits of its Admiralty jurisdiction.

For the joint opinion of the Queen's Advocate and her Majesty's Attorney and Solicitor General.

THE ACCOMPANYING PAPERS, &c.

1. Charge of Mr. Justice Grant to the Grand Jury.
2. Mr. Justice Grant's Notes of the trial.

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the English and the States General, when the English contended that the giving judgment in this case belonged to the Prince who had issued the reprisals. "Ordinum Generalium legati urgebant pro pirata esse habendum, qui sine legitimo Principis mandato hostile quid moliritur, omniumque gentium jus esse, eum puniri posse a quocunque Principe in cujus potestatem fuisset redactus, ejusque rei quam plurima extare exempla" The French Ambassadors, he says, were at that time of the same opinion, and so it was then agreed between the English and the States General. "Vulgo de mandatis suis judicant ipsi Principes, quia capta ad eos deferuntur,—facile tamen patior eum principem, cujus subditi de rapina quæruntur, de ea ipsa judicare, si qui eam fecit ad eum advectus, vel apud eum deprehensus fuerit" And he says that a contrary rule was matter of express treaty, inserted in the treaty of peace between France and Holland of April, 1662.

The question he is discussing relates to the special case of piratical aggression committed by one holding the commission of a foreign Sovereign by letters of Marque or Reprisal; and, in such case, the author decides, that the Prince whose subjects complain of having suffered by the act of piracy may judge the foreign pirate, though having such commission, if apprehended and brought before him.

But he goes on to say "In extero qui exteros deprædatus est, plus est difficultatis, an nempe is apud nos deprehensus a nobis judicari possit? Anno 1661, dubitatum est in eo, qui a Rege Lysitaniæ habebat prædandi mandatum et amicis quibusdam nostris, quibuscum Rege Lysitaniæ nullum quoque bellum erat, in mari rapinam fecerat.—Sed prædone interim mortuo, tunc nihil definitum est."

This was a case not of a private foreign pirate committing an act of piracy upon another foreigner, but of a foreigner, holding the commission of his sovereign, so doing, which involved the question of the exclusive right of that sovereign, *de mandatis suis judicare*, where it was not encountered by the right of the sovereign, in whose territories the culprit was apprehended, to vindicate the wrongs of his subjects. But even in this case Bynkershoek relates, that it was decided by the English Courts of Admiralty, that the courts of the sovereign, within whose territories the offender is found, have jurisdiction "in exterum qui exteros depredatus est, judicare." "*Rex* tamen *Angliæ* anno 1668 *navim Ostendensem* cum mandato Regis Hispaniarum quæ *navim Hollandicam* occuparet, ad petitionem Legatorum Ordinum Generalium detineri *et leges contra Navarchum exerceri jussit.*"

3. Letter of the Chief Justice, Sir Edward Ryan and Mr. Justice Malkin, to the Secretary of the Board of Controul, dated 24th February, 1837.
4. Letter of Mr. Justice Grant, to the Secretary of the Board of Controul, dated 4th March, 1837.

Are submitted to the Queen's Advocate and to Her Majesty's Attorney and Solicitor General for perusal, in order that they may advice the Commissioners for the affairs of India, whether the admiralty jurisdiction of the Supreme Court of Judicature at Calcutta, has been properly exercised in the trial and conviction of certain Aliens for robbery, committed on the 17th June, 1836, on board the foreign merchant ship, called the *Sumatra*, upon the high sea, about 400 miles from the Island of Sumatra, and within the admiralty jurisdiction of that Court.

The joint opinion of her Majesty's Law Officers on this case will be submitted to the Privy Council, by the Secretary of State, for the Home Department.

This decision appears approved by Bynkershoek, who intimates his disapprobation of two Edicts of the States General which prohibited the sale in Holland of ships or goods "ex mandato Exteri Principis captas, nisi in suum unde prœdatum enavigarit portum deductas, ibique publicatas;" for he says, if you deny to the captor the power of asserting, in your courts, his right to the captured property, it would seem unjust "contra eum qui cepit vel Fisco hic actionem dare "de crimine, vel exteris navium merciumque dominis de damno dato. Utriusque "exteri conditio in pari causa sit oportet. Aut contra prœdatorem hic agi poterit, "aut non poterit. Si possit, etiam is qui prœdatus est hic agere poterit de jure "suo, et contendere prœdam, quam cepit, recte captam esse. Et tamen durum et "sine exemplo esset naviumr erunque dominis res suas hic apud peregrinum, quem "mox nescias quo abiturum, deprehendentibus jurisdictionem negare, quam si non "neges, quemadmodum prœdatori negabis? Sic ut vel ea ratione mihi non satis "placeant duo illa quæ dixi Ordinum Generalium Edicta."

It is clear, therefore, that Bynkershoek holds that the jurisdiction, criminal and civil, of the courts of admiralty, of every state within whose territory the persons accused are apprehended, extends over subjects of foreign princes, sailing in the ships of their nation, to adjudicate, criminally and civilly, upon alleged acts of piracy committed by them upon the high seas, despoiling other foreigners. [Bynkershoeck Quest. Jur. Pub. L. 1. c. 17. p. 127. Ed. 1752.]

It is recorded in Smollett's history of England that in 1759, two *Genoese* mariners who were enrolled among the crew of an *English* vessel, succeeded in murdering the master and all the rest of the crew *who were Englishmen*, and in taking possession of the ship at sea within about 60 leagues of the rock of Lisbon. The French and English were then at war, and the ship was taken between the Capes Ortugal and Finisterre by a French privateer called the Favourite. The captain's suspicions being roused from the blood upon the deck, and other circumstances, he questioned his prisoners, who confessed all the particulars. The ship and the prisoners being taken into *France*, were *there tried* and *brought to condign punishment*. (Hume & Smollet's History of Eng. vol. 12 chap. 10. p. 456.—Eds.

OPINION.

We are of opinion, that the Court of Admiralty has no jurisdiction to try Aliens for robbery, committed on the high seas, on board an alien merchant ship, in which they were serving, and that the conviction in this case is consequently erroneous.

J. DODSON.
J. CAMPBELL.
R. M. ROLF.

September 23rd, 1837.

Letter from John Hobhouse, Esq., President of the India Board, to the Judges of the Supreme Court, dated 10th November, 1837, enclosing a free pardon from the Queen to the prisoners.

India Board, 10th November, 1837.

The Judges of the Supreme Court of Judicature, Calcutta.

GENTLEMEN,—In reference to the letter of the 24th February 1837, which you addressed to the Secretary of this Board, I have to inform you, that the Commissioners for the affairs of India have deemed it advisable to recommend the six prisoners, Agapito de los Reis, Rehamo Antonio, Mariano Francisco, Augustin Moni, Clementini Marco, and John Lawrence, for her Majesty's free pardon, which I transmit to you herewith.

I have the honor to be, gentlemen,
Your obedient humble Servant,

JOHN HOBHOUSE.

Agapito de los Reis et al.—Free Pardon.

VICTORIA R.—WHEREAS, Agapito de los Reis, Rehamo Antonio, Mariano Francisco, Augustin Moni, Clementini Marco, and John Lawrence were, at an Admiralty session of the Supreme Court of Judicature, at Calcutta, holden in August 1836, convicted of piracy. We, in consideration of some circumstances, humbly represented unto Us, are graciously pleased to extend our grace and mercy unto them, and to grant them our free pardon for their said crime. Our will and pleasure therefore is, that you cause them the said Agapito de los Reis, Rehamo Antonio, Mariano Francisco, Augustin Moni, Clementini Marco, and John Lawrence, to be forthwith discharged out of custody, and for so doing, this shall be your warrant. Given at

our Court at St. James's, the twenty-eighth day of October, 1837, in the first year of our reign.

To our Right Trusty and well beloved Councillor, George Lord Auckland, Governor General of India, and all others, whom it may concern. } By Her Majesty's command,

J. RUSSELL.

QUARTER SESSIONS OF THE PEACE,

For the Town of Calcutta.

Mr. Advocate General Spankie's opinion as to the holding of same, dated 15th May, 1819.

To W. B. BAYLEY, ESQ.

Secretary to Government, Judicial Department.

SIR,—I have the honor to acknowledge the receipt of your letter of the 22d ultimo, inclosing a minute of Council, recorded by the Hon'ble Mr. Stuart, relative to the circumstance which occurred at the last meeting of the Sessions of the Peace, held for the town, &c. of Calcutta, and requesting me to furnish Government, with my sentiments on the points therein noticed.

2. The nature of the Sessions of the Peace, which have been held from time to time, since the passing of the 13 Geo. 3, c. 63. and the letters patent, issued pursuant thereto, does not seem to have been very much considered in practice, and perhaps some of the Acts of Parliament, which have been enacted since that time, and which refer to General and Quarter Sessions here, have been drawn up without the framers of those acts, adverting to the footing on which the establishment of Justices and Sessions stood at this presidency, and have therefore produced some difficulty and obscurity.

3. I do not know that any General or Quarter Sessions of the Peace were held after passing the 13 Geo. 3, till the year 1794, when the General and Quarter Sessions, stiled in the Clerk of the Peace's Book, the first was held.

4. It is necessary, in order to ascertain the true character of the Court or Courts of General and Quarter Sessions legally existing here, to consider how the establishment of Justices and Sessions stood prior to the 13 Geo. 3, c. 63.

5. By the charter of Geo. II. 8th January, 1753, the Governor or President and Council at Fort St. George are constituted

Justices of the Peace for that settlement "in the same, or the "like manner, and with the like power, as Justices of the "Peace, constituted by any commission or letters patent under "our Great Seal of Great Britain for any country, &c. in "England do or may exercise."

6. The Governor General and Council of Fort William are, by the same charter, constituted Justices of the Peace, in the same manner with the same powers as those of Fort Saint George, reference being made to that part of the charter without repeating it in detail.

7. From the charter of Geo. II. which, to this purpose, will be found still in force, it is evident, that the Justices thereby constituted have, by the express words of the Commission, as it exists in England and by reference extended to them full power to enquire, hear and determine in almost all criminal cases as in England, subject to and modified by the special regulations and provisions of the charter.

8. The same charter also expressly directs that the Governor or President and Council or any three of them, of which the Governor or senior Member of Council shall be one "*shall and may*" hold Sessions of the Peace and Oyer and Terminer and Gaol Delivery, four times a year.

9. The 13 Geo. 3, c. 63. s. 19, repeats the powers and authorities of the Mayor's Court, but says nothing of the powers of the Governor General and Council as constituting a Court of Quarter Sessions and as Commissioners of Oyer and Terminer and Gaol Delivery, which by that clause seems not to be *repealed*. The letters patent of 1774, section 36, however, in the most express terms repeals the power of the Governor General and Council as *Commissioners of Oyer and Terminer and Gaol Delivery*, which I conceive would of itself be a sufficient repeal of a former Royal charter to that extent, but the 13 Geo. 3, c. 63. s. 20, also, by directing all the records of the Court of Oyer and Terminier and Gaol Delivery (saying nothing as to those of the *General and Quarter Sessions*) to be deposited in the Supreme Court, evidently contemplated that repeal, leaving however the Court of General and Quarter Sessions untouched.

10. The 13 Geo. 3, c. 63. s. 38, enacts and declares, that the Governor General in Council at Fort William and the Chief Justice and other Justices of the Supreme Court are to be and to have full power to act as Justices of the Peace, &c, and for that purpose the said Governor General in Council are authorised and empowered to hold Quarter Sessions, four times a year, and the same shall always be a *Court of Record*.

11. Under this clause taken by itself, it might be doubtful whether the Court of Quarter Sessions could enquire, hear and

determine a power not specified and which it is held that Justices of the Peace derive from the Commission. Hawkins, in his Pleas of the Crown, seems to think, that Justices of the Peace would, by the statute 34 Edw. 3, c. 7, have power to hear and determine felonies, &c. There seems great reason to think, viewing all the acts together, and considering that a Court of Quarter Sessions exercising criminal jurisdiction is often recognised, that Justices of the Peace constituted by Act of Parliament, to do every thing appertaining to the office of a Justice of Peace, and to hold Quarter Sessions, and to be a Court of Record, as is the case here, would have such authority without reference to the words of the usual commission, and I conceive, that the object at the time for appointing sessions could only be criminal jurisdiction. As it appears, however, that the Governor General and Council, by virtue of the charter of Geo. II. are Justices, with like powers with Justices in England, under the usual commission, it follows that the Governor General in Council assembled at sessions, are empowered to enquire, hear and determine. The object of the 38th. section of this act empowering the Governor General and Council to hold Quarter Sessions, (which the Governor General and Council could do by the charter of Geo. II.) is not very obvious, unless it was to enable them to hold Sessions, free from the limitation as to the mode of constitution specified in the charter, and to remove any doubt of their competence as to hold such Court.

12. The charter of Geo. II. as has been mentioned, provides, that the Governor or President and Council shall be Justices of the Peace, and have power to act as Justices of the Peace and as Commissioners of *Oyer and Terminer and General Gaol Delivery*, and that they or any three or more of them whereof the Governor or President, or in his absence the senior of the Council then residing at Fort William, shall be one, shall and may hold Sessions of the Peace, and Oyer and Terminer and Gaol Delivery respectively, &c.

13. It appears to me, that if the Court of Quarter Sessions, constituted by the charter, were to assemble, (and its legal existence is expressly recognised by the charter of 1774. s. 21,) it would be necessary, that three of the Council, of which the Governor or senior member should be one, should meet in order, to enable the Court to act, for the Court of Quarter Sessions by that charter is expressly so constituted.

14. I am of opinion, however, that the 13 Geo. 3, gives a new concurrent authority to hold sessions without this limitation, and that the Court of Sessions held under 13 Geo. 3, by the Governor General and Council may be considered a different Court, and that a legal number for holding a Quarter Sessions, that is, two would be sufficient under the last mentioned act.

15. Considerable difficulty arises as to the powers and authorities of the Justices, constituted by commission upon the 33 Geo. 3, c. 52, s. 151, by which the Governor General in Council is empowered to direct the Supreme Court here to issue Commissions of the Peace, authorising the persons therein named to be Justices of the Peace, according *to the tenor of the said Commissions* (1) with the following proviso, "that the persons so nominated and appointed as aforesaid, shall not be "capable of holding *any Court of Oyer and Terminer and Gaol "Delivery, nor to set in any such court unless* the Justices of the "said Court shall, upon any particular occasion, call upon "them so to do, in which case as often as the same shall "happen, the person so called upon, shall and may for that "time associate with them and set as Justices of the said "*Court of Oyer and Terminer and Gaol Delivery by virtue of this* "*act*, and have a deliberative voice being first specially authoris-"ed for *that purpose*, by an order in Council."

16. I must confess, that taking the words "*Court of Oyer and Terminer and Gaol Delivery*," in their legal acceptation, I am at a loss to comprehend the meaning of this proviso, at least as applicable to this presidency. Justices of the Peace as such and under the Commission of the Peace, or any other constitution as Justices of the Peace are not Justices or Commissioners *of Oyer and Terminer and Gaol Delivery*, which are distinct separate Commissions well known, and both ordinarily and on extraordinary occasions used in England. In the county of Middlesex, there is always a commission of Oyer and Terminer as well as a Commission of the Peace; and the commission of General and Quarter Sessions and of Oyer and Terminer and Gaol Delivery are never confounded. The Court of Quarter Sessions never is spoken or known in any Act of Parliament or Law Book under the name of a Court of Oyer and Terminer and Gaol Delivery, but is expressly distinguished from them. Indeed, in the acts and charter relative to the Courts in India, the distinction is pointedly maintained.

17. There being at the time of passing the 33d Geo. 3, only one Court of Oyer and Terminer and Gaol Delivery at Fort William, (that of the Governor in Council being clearly abolished,) the only effect of this clause here, *if a Court of Oyer and Terminer and Gaol Delivery properly so called be intended*, would be, that the persons nominated as Justices might in the mean specified be associated with the Justices of the Supreme Court. That, however, I think, is not the true meaning.

(1) By the 47, Geo. 3, c. 68, the same power is given to the Government of Madras and Bombay, and the power of nomination of Justices for the other presidencies is taken away from the Government here.

18. I cannot help thinking, that the framers of the act must have contemplated the Court of Oyer and Terminer and Gaol Delivery, composed of the Governor in Council under the charter of Geo. II. as still in existence at this presidency and meant to restrict the Justices by Commission, to act as Justices of Peace only; or, at all events, had in contemplation the state of the Courts at Madras, where the Governor and Council then still continued the only Justices or Commissioners of Oyer and Terminer and Gaol Delivery, under the charter of Geo. II.

19. It is difficult, according to the principles of legal construction, to consider the Justices of Peace here, who had been Justices and Commissioners of Oyer and Terminer and Gaol Delivery, but had ceased by express provision to be so any longer, constituting a Court of Oyer and Terminer and Gaol Delivery, or capable of associating others to a function they did not possess, and besides the very term of association is taken from the form of associating particular persons with the Justices of Oyer and Terminer and Gaol Delivery, and seems not to have any reference to a Commission of the Peace, or Justices of the Peace, acting in that capacity, though perhaps that was intended.

20. It is observable also, that in the 47 Geo. 3, c 68, (1) which was posterior to the establishment of the Supreme Court at Madras, the section empowering the Governor in Council there and at Bombay, to nominate Justices of the Peace, (which is nearly in the same terms as the 151st sec. of 33 Geo. 3, c. 52,) omits the proviso about associating such Justices, and enacts generally, that the said Justices shall be subject to all such regulations and restrictions as by any act or acts of Parliament, now in force, the Justices of the Peace to be appointed by the Governor General in Council at Fort William and their proceedings are or might be subject or liable to.

21. I think also, not only for the reasons stated, but others drawn from different parts of the 33 Geo. 3, that the legislature contemplated the Courts of Quarter Sessions and Courts of Oyer and Terminer and Gaol Delivery as quite distinct, and therefore, that the association, mentioned in the proviso in the 151st section, must be taken to be an association to Courts of Oyer and Terminer and Gaol Delivery, properly so called, and not a Court of Quarter Sessions, though exercising criminal jurisdiction. Section 153 enacts, that all convictions, *judgments*,

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(1) Under this Act, the Governor and Council of Madras and Bombay are authorised to hold Quarter Sessions four times a year; and they are apparently the only Justices who can hold Quarter Sessions at those Presidencies.

W. B. B.

orders, and other proceedings which shall be had, made or pronounced by or before any Justice or Justices of the Peace, *out of the Court of Oyer and Terminer*, in and for the same, shall be removeable by writ of certiorari into the Court of Oyer and Terminer and Gaol Delivery of and for the same presidency, and the manner is pointed out; so that it is clear that any *judgment* at Sessions of the Peace or any order made there, is removeable, and any judgment of the General or Quarter Sessions that could be made, would be removeable into the Supreme Court, as being made *out* of the Court of Oyer and Terminer; there being no other Court of Oyer and Terminer at this presidency but the Supreme Court. The section indeed is drawn up without the legal precision which might have been expected, for an order made in the Court of Oyer and Terminer, which here, I think, clearly means Court of Oyer and Terminer in the strict technical sense, though made by persons who were Justices of the Peace, could never have been construed to be made by them in that character, if sitting as a Court of Oyer and Terminer and Gaol Delivery.

22. I have referred to the record or minute book of the Sessions, held here since the 33 Geo. 3, and I find that the three first Sessions, namely the *first* on the 23d of April 1794, the second on the 27th December 1794, the third on the 28th July 1796, were held by the Governor General together with two other members of the Council. On these three occasions an order in Council for associating certain magistrates of Calcutta, appears to have been passed and is mentioned, and the Sessions are sometimes held by adjournment by two or more of the associated Justices. Though a Grand Jury was always summoned on these occasions, and charged by the Chairman to enquire, &c., nothing seems to have been done but the business of assessment.

23. In 1806 (there having been a suspension of the Sessions from the year 1796, till that time), the General and Quarter Sessions were held, Mr. Lumsden being the only Member of Council present. The fifth sessions was held in 1810, the 6th in 1812, the 7th in 1814, and the 8th in 1816.

24. In the entry of the three first and the fourth, the association of the other Justices by order of Council is expressly mentioned. In the entry of the fifth, it is not mentioned. In the sixth and seventh, there is no order of association expressly mentioned, but an order is referred to, which is probably that for association. In the eighth, it is not at all alluded to. If indeed the Commission Justices of Calcutta, have any authority to meet and act in Sessions at all, which I confess seems liable to very considerable doubt (unless when associated for the specific purpose mentioned in the 33 Geo. 3) their attendance *might* enable the Sessions then assembled, to execute the duties on

which they attend. They are to associate and to sit and have voice in a Court of *Oyer and Terminer*, or to exercise criminal jurisdiction. The order of Council extends to no other purpose; and if the Justices had not by the tenor of these commissions and by the act of Parliament, empowering the Justices of the Peace, within and for the presidency of Fort William, or the major part of them, from time to time, *assembled at their General and Quarter Sessions* to make assessments, &c. it is manifest, that they can derive no authority whatever for that purpose from the order in Council.

25. All the General and Quarter Sessions, except the three first, appear, therefore, to have been incapable of transacting any criminal business, for want of being duly constituted by a sufficient number of Justices having powers to that end, unless the order in Council, founded upon the 33 Geo. 3, conferred the qualification upon the associated Justices for exercising criminal jurisdistion in Sessions, taking the words of the 151st section to mean, not, according to the *letter*, a Court of Oyer and Terminer, but a Court of Quarter Sessions, exercising the power to have and determine as Courts of General and Quarter Sessions usually do, a construction perhaps consistent with the intention, but very difficult to reconcile with the words of the act.

26. Upon the whole, I am of opinion, that a Court of General or Quarter Sessions to be held here by the members of Council, without any other Justices, and which is authorised by the 13 Geo. 3, c 63, s. 30, would, as in England, be legally formed by the meeting of *two Justices*, and the qualification as to them applies only to the Court of Sessions constituted by the express words of the charter of Geo. II.

27. If the proviso in section 151 of 33 Geo. 3, be understood to apply not to a Court of Oyer and Terminer and Gaol Delivery in the proper sense, but is to be a prohibition to exercise criminal jurisdiction *in Sessions* except by order of Council, the Justices nominated by *Commission* could not by Commission be empowered to hear and determine. Great doubt arises from inaccurate language of that proviso. The terms of the Commission might be enlarged, if the prohibition to sit in a Court of Oyer and Terminer be meant to apply to those Courts in a technical sense, because there would then be no restriction upon the extent of authority to be conferred by the Commission of the Peace. By way of caution, however, the order in Council, to associate, might issue as hitherto, and the terms of the Commission might be so framed as to recognize the qualification of the act generally.

28. It is evident, that the legislature contemplated the Courts of General and Quarter Sessions at the different presidencies, as administering criminal justice. The 26 Geo. 3, c.

57, s. 68, makes British subjects amenable to the *Courts of Oyer and Terminer and Gaol Delivery, and Courts of General and Quarter Sessions*, at any of the British settlements in India. The 39 Geo. 3, c. 79, s. 13 enacts, that persons who shall have been convicted *at any Sessions of Oyer and Terminer and Gaol Delivery, or any Session of the Peace*, holden for any of the presidencies, of certain offences specified, shall be liable to be transported, &c.

29. Under the various acts referred to, the state of the jurisdiction of Justices and Sessions is rather singular. It seems as if the Governor General and Council had two distinct powers to hold sessions, and that they would be differently constituted, according to the mode of holding them.

30. The Court of Sessions of the Peace created by the charter of Geo. II., although the Commission of Oyer and Terminer and Gaol Delivery has been taken away, still remains, and is expressly recognised by the charter of 1774, section 21, as the Court of Quarter Sessions erected and established by the charter of Geo. II. This Court of Quarter Sessions can only be constituted by three members of the Council, of which the Governor or in his absence the second member must be one.

31. There is also a Court of Quarter Sessions erected *de novo*, by the 13 Geo. 3, c. 63, s. 38, which declaring the Governor General and Council to be Justices of the Peace, (which they were before and continued to be under the charter of Geo. II.) expressly enacts, that the Governor General and Council are authorized and empowered to hold Quarter Sessions four times a year, and the same shall, at all times, be a Court of Record.

32. Under the authority of this act, I am of opinion, that the same number of members, necessary to a Court of General or Quarter Sessions in England, that is two, might legally hold sessions for all purposes, and more particularly for the trial of offences.

33. The 33d Geo. 3 enacts, that the Justices of the Peace within and for the different presidencies respectively, or the major part of them, from time to time, assembled at these General or Quarter Sessions, shall appoint scavengers, make assessments, &c. This jurisdiction, however, I think can only be exercised by the sessions to be held by the Governor General and Council, who alone are empowered to hold sessions, and I have great difficulty in seeing how the Justices, under the present commission, can sit in sessions at all, such power not being given by the commission. The order in Council does not appear to be of any avail to this purpose. The jurisdiction to be exercised by Justices in Sessions, must mean such Justices as are competent to hold Sessions, which the Justices by commission are

not; and if the latter have not the power by their commission or some express legislative declaration, I am at a loss to see how they can legally act in Sessions, along with other Justices, who act under an authority peculiar to themselves.

34. Whether it be expedient, that the members of Council either to the number of three, under the charter of Geo. II, or the legal number two at the Court under the 13 Geo. 3, c. 63, s. 38, should meet for the exercise of criminal jurisdiction, or whether the Commission of the Peace should be altered in some respects to enlarge the powers of the Justices to enable them to exercise criminal jurisdiction (preserving, however, the form of association by order in Council) are points on which I do not feel myself very competent to form an opinion. The holding of sessions for the purpose of trying offenders, would require the attendance of a grand and petty jury, which might occasion considerable inconvenience, unless their attendance at sessions should be found to dispense with their attendance in the Supreme Court, for the same or a longer period.

35. It perhaps, may be made a question, whether it be not imperative to hold Quarter Sessions for the purposes of administering Justice, if the Justices of the Peace, (that is the Justices capable of exercising criminal jurisdiction,) were called upon so to do; and I am not sure, that a party who had an indictment to present at the sessions, might not apply to the Supreme Court for a mandamus to the Justices to hold sessions for the purpose of receiving indictments and proceeding on lawful business of sessions. Such a case, however, is not probably very likely to occur.

36. If it were necessary to render the sessions efficient as a *Criminal Court*, I think it might be done by extending the powers of the commission for that purpose, and still qualifying the power by a reference to the terms of the 151 section of 33 Geo. 3, and the commission might be so framed as to confer authority to exercise criminal jurisdiction in whatever sense the words of the clause of association in that act are construed. It seems to me that the attendance of two members of Council would be required to open the sessions and present the order for association, and that then the sessions might then be held by any competent number, two at the least of the Justices of whom it would not be requisite that the members of Council should be part. I think that at all events the commission should be *altered*, enabling the Justices or a select member of them to attend and have voice at sessions with the justices, already qualified by law to hold sessions, and empowering such Justices by commission to transact any business, directed by any act of Parliament, to be done by the Justices in and for Calcutta, &c. at sessions, with a qualification as already mentioned in regard to hearing and determining.

37. It appears to me also that the style of the sessions would be the "General (or) Quarter Sessions of the Peace, held by the Governor General and Council," *and other Justices of the Peace* in and for, &c. &c.

38. With respect to the periods of holding sessions, it seems to have been intended, that they should be held four times a year, and though the stat. 12, R. 2. c. 10, which commands the sessions so to be held, may not be considered in force here, (yet it does not appear to be local in its provisions.) The words in the charter of Geo. II are, *shall and may* hold Sessions of the Peace, which seem to be imperative, and though the 13th Geo. 3, c. 63, s. 38, says only that the Governor General and Council are authorised and empowered to hold sessions, it might be thought by analogy to the statute law of England, and established usage, that no discretion was intended with respect to holding the sessions four times a year.

39. At all events the provisions in the 33d Geo. 3 appears to require frequent meetings of Sessions, at least once a year. The assessment there directed to be made is an assessment upon the yearly value; and therefore, as the value of property is fluctuating, a rate for more than a year cannot be the rate, which the sessions have power to make. It seems by necessary implication to require an *annual rate*, and the practice in England in all similar assessments, made under the authority of similar words, is to make annual rates at least, and rates for a longer period have, upon the reason of the thing, been adjudged illegal and void. The power of the Justice to make assessments is a qualified authority, and they must pursue it strictly.

40. The sessions assembled on the occasion referred to in Mr. Steuart's minute, I am afraid were not regularly constituted, even for the business of assessment. It seems to me that the presence of two members was necessary, I have already expressed my doubts, whether the other Justices have any power to hold or attend in sessions at all, except for the purpose specified in the 151 section of 33 G. 3, which at all events applies only to commercial business.

41. It is not very probable indeed, that any attempt would be made to question the legality of the proceedings, but when the *rate* or assessment is to receive the sanction of the Justices which must be in sessions, it seems advisable, that it should have the signature of two members of Council. There may arise difficulties in the collection, and if the rate itself were invalid, no proceeding under it would be legally justifiable. For the same reason, I should be inclined to think, that the next meeting, or at least the meeting at which the rate shall be finally passed, should be an original rather than an adjourned Sessions, for if the last meeting was not regularly constituted,

it could not be adjourned at all. This, however, may be done with such caution as not to raise any doubt of the legality of the last meeting, and I think no entry of the last meeting should be made at all upon the records of the sessions

Perhaps, however, these which are points of form and regularity, may be further considered at the next meeting of sessions when the benefit of the experience of the professional gentlemen in the commission may be obtained upon a subject, which I have found very perplexed and obscure.

I have the honour to be, Sir,

Your most obedient Servant,

(Signed) R. SPANKIE, *Advocate General.*

Fort William, May 15, 1819.

HER MAJESTY'S ORDER IN COUNCIL,

Dated 10*th April*, 1838.

IN REFERENCE TO

APPEALS FROM THE COURTS WITHIN THE TERRITORIES UNDER THE GOVERNMENT OF THE

EAST-INDIA COMPANY.

AT THE COURT AT BUCKINGHAM PALACE,

10*th April*, 1838;

PRESENT

THE QUEEN'S MOST EXCELLENT MAJESTY.

LORD CHANCELLOR,	LORD JOHN RUSSELL,
LORD PRESIDENT,	VISCOUNT PALMERSTON,
LORD STEWARD,	VISCOUNT MELBOURNE,
LORD CHAMBERLAIN,	LORD GLENELG.
EARL OF MINTO,	

WHEREAS, by an act passed in the fourth year of the reign of his late Majesty, King William the Fourth, intituled, "An "Act for the better administration of Justice in his Majesty's "Privy Council," it is among other things enacted, that "it "shall be lawful for his Majesty in Council, from time to time, "to make any such rules and orders as may be thought fit, for the "regulating the mode, form, and time of appeal, to be made from "the decisions of the Courts of Sudder Dewanny Adawlut, or "any other Courts of Judicature, in India or elsewhere, to the

"eastward of the Cape of Good Hope (from the decisions of "which an appeal lies to his Majesty in Council), and in like "manner from time to time, to make such other regulations "for the preventing delays in the making or hearing such "appeals, and as to the expenses attending the said appeals, "and as to the amount or value of property in respect of "which any such appeal may be made;" AND WHEREAS his said late Majesty did, by his order in Council, on the 16th day of January 1836, approve certain rules and orders for regulating the mode, form, and time of appeal from the decisions of the said Courts of Sudder Dewanny Adawlut, and also certain regulations for the preventing delays in the making or hearing of such appeals, and as to the expenses attending such appeals; and the said rules, and orders, and regulations were set forth in certain schedules, A. and B., to and by the said order in Council of the 16th of January annexed and approved: And whereas his said late Majesty did, by his further order in Council, made on the 10th day of August, 1836, alter and amend the said schedule B., by cancelling the rule No. 5, of the said schedule B. so approved as aforesaid, and ordering that, in lieu of the said fifth rule thereof, a certain other rule in such last-mentioned order set forth, should be substituted: And whereas the Queen's Most Excellent Majesty in Council hath deemed it expedient to cancel and rescind all the said rules, orders, and regulations, and to make and substitute others in lieu thereof:—

Her Majesty is therefore pleased, by and with the advice of her Privy Council, to cancel and rescind all the said rules, orders, and regulations in the said recited orders in Council of the 16th day of January 1836, and 10th day of August 1836, respectively contained, and thereby or by either of them approved, and to approve of the several rules, orders, and regulations contained in the schedule hereunder written or hereunto annexed, and to order, as it is hereby ordered, that the same be respectively observed by her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, and Bombay respectively, by the Court of Judicature of Prince of Wales' Island, Singapore and Malacca, and by the said several Courts of Sudder Dewanny Adawlut, and all other Courts of Judicature in the territories under the Government of the East India Company, and by all persons whom it shall or may concern. Whereof the Governor General and the Council of India, the Governor of Fort William in Bengal, the Governor in Council at Fort St. George, the Governor in Council at Bombay, the Governor of Agra, the Chief Justice and Judges of her Majesty's Supreme Court of Judicature at Fort William aforesaid, the Chief Justice and Judges of her Majesty's Supreme Court of Judicature at Fort St. George, the Chief Justice and Judges of her Majesty's Supreme Court of Judicature at Bombay, the Court of Judicature of Prince of Wales' Island, Singapore and

Malacca, the Judges of the several Courts of Sudder Dewanny Adawlut, in the East Indies, and the Judges of all other Courts of Judicature in the territories, under the Government of the East India Company, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

(Signed) C. C. GREVILLE

THE SCHEDULE ABOVE REFERRED TO.

1. That from and after the 31st day of December next, no appeal to her Majesty, her heirs and successors in Council, shall be allowed by any of her Majesty's Supreme Courts of Judicature at Fort William in Bengal, Fort St. George, Bombay, or the Court of Judicature of Prince of Wales' Island, Singapore and Malacca, or by any of the Courts of Sudder Dewanny Adawlut, or by any other Courts of Judicature in the territories under the Government of the East India Company, unless the petition for that purpose be presented within six calendar months from the day of the date of the judgment, decree, or decretal order complained of, and unless the value of the matter in dispute in such appeal shall amount to the sum of ten thousand Company's rupees at least; and that, from and after the said 31st day of December next, the limitation of five thousand pounds sterling heretofore existing in respect of appeals from the Presidency of Fort William in Bengal, shall wholly cease and determine.

2. That in all cases in which any of such Courts shall admit an appeal to her Majesty, her heirs and successors in Council, it shall specially certify on the proceedings that the value of the matter in dispute in such appeal amounts to the sum of ten thousand Company's rupees or upwards, which certificate shall be deemed conclusive of the fact, and not be liable to be questioned on such appeal by any party to the suit appealed.

3. PROVIDED NEVERTHELESS, that nothing herein contained shall extend, or be construed to extend, to take away, diminish, or derogate from the undoubted power and authority of her Majesty, her heirs and successors in Council, upon the petition at any time of any party aggrieved by any judgment, decree, or decretal order of any of the aforesaid Courts, to admit an appeal therefrom, upon such other terms, and upon and subject to such other limitations, restrictions, and regulations, as her Majesty, her heirs and successors, shall in any such special case think fit to prescribe.

4. That on the arrival of the transcripts of proceedings in an appeal to her Majesty, her heirs and successors in Council,

from any of the said Courts of Sudder Dewanny Adawlut, or any other Courts in the East Indies constituted by the East India Company, or any of their Governments, from which an appeal lies to her Majesty in Council, such officer of the East India Company as the Court of Directors of the said Company shall, from time to time, appoint, shall forthwith give notice to the clerk of the Council thereof, stating at the same time the names of the parties to the appeal, and the date of the decree appealed from, and that such notice shall be duly registered in the Council office.

5. That the said transcripts of proceedings shall be kept at the East India House, or at such other convenient place within the cities of London or Westminster as the said Court of Directors shall from time to time, appoint; the agents respectively conducting and defending such appeals in this country, being at liberty to take all the necessary copies and extracts from the said proceedings, and to examine the same from time to time; and it shall be the duty of such officer, by himself or his sufficient deputy, to produce the original transcripts before the Judicial Committee, upon the hearing of such appeal, upon due notice for that purpose previously given, and upon all other occasions when thereunto required by the Privy Council or the Judicial Committee.

6. That in default of the petition of appeal of the appellants being lodged in the Council office within three calendar months from the registration of the arrival of such transcripts, or in default of the appellant's case being carried in within one year from the time of such registration, the respondent shall be entitled, in either case, to move to dismiss the appeal for want of prosecution; and in the event of the respondent's not bringing in his case within one year from the time of such registration, the appellant shall be entitled to apply to have the case heard *ex-parte*.

(Signed) C. C. GREVILLE.

ADMIRALTY CHARTER

OF PRINCE OF WALES' ISLAND, SINGAPORE AND MALACCA.

Letters Patent, 7 Will. 4.

ing Admiralty Jurisdiction to the Court of Judicature of ice of Wales' Island, Singapore and Malacca, dated 25th ruary, 1837.

ABSTRACT.

Recites charter of 27th November, 7 Geo. 4, creating the Court of Judicature of Prince of Wales' Island, Singapore and Malacca.

Recites charter of 26th March, 14 Geo. 3, creating the Supreme Court of Judicature at Fort William in Bengal.

Recites 33 Geo. 3, cap. 52, sec. 156—53 Geo. 3, cap. 155, sec. 110—and 6 & 7 Will. 4, cap. 53.

Enacts, that the Court of Judicature at Prince of Wales' Island, Singapore and Malacca, shall be a Court of Admiralty.

Declares its powers, and in what causes to proceed.

The extent of jurisdiction, which is to be exercised as in Great Britain, without the strict formalities of law.

Gives further powers in regard to crimes maritime.

Power to arrest ships, &c., and compel persons to appear under penalties.

Jurisdiction—To take cognizance of all crimes perpetrated on the high seas, as fully as the Supreme Court at Fort William, or any colonial Court.

Proviso, limiting the Court's powers to such persons as are amenable to it in its ordinary jurisdiction.

Grants to the East India Company all fines.

Power of the Court to make satisfaction to prosecutors. with powers to sue for and recover the same.

Appeal allowed to the King in Council in civil causes, by petition to the Court.

Security to be taken on such appeal for costs and for performance of judgment.

The Court, on such appeal, to transmit a copy of all evidence.

In criminal suits the Court may allow or deny appeal, and regulate the terms.

Reservation of power in the King to refuse an appeal, directs the Court to execute judgments and orders of his Majesty.

ABSTRACTS

OF POLICE REGULATIONS.

A. D. 1802.

A Regulation for the good order and civil Government of the settlement or factory of the United Company of Merchants of England, trading to the East Indies, at Fort William in Bengal, respecting the sale and manufacturing of Gun-powder within the said settlement and the limits thereof; passed by the Governor General in Council, on the 8th April, 1802, and registered in the Supreme Court on the 23d of June, in the same year.

Section 1.—Recites the powers given by Act 13, Geo. 3, cap. 63, to the Governor General in Council, to make regulations with consent of Supreme Court, by which they are to be registered and published.

Ordains, that no person shall manufacture gun-power within the limits of Calcutta and settlement of Fort William, without license signed by two or more Justices, upon pain of forfeiting all gun-powder so manufactured, which may be seized by any person; also under penalty of 500 sicca rupees.

2. No person shall sell gun-powder, manufactured in India, without licence, under penalty of 400 rs. for every seer sold.

3. No person shall keep, at one time, more than thirty seers in his shop or place of manufacture, or in house, &c., occupied by such person.—On pain of forfeiting all the gun-powder beyond the quantity allowed, which may be seized, &c. Also under penalty of 2 rs. for every seer sold beyond quantity.

4. No dealer or manufacturer of gun-powder shall keep more of the mixed materials than sufficient for the manufacture of thirty seers.

5. Licenses may be resumed, &c.

6. Any Justice may, on reasonable cause assigned upon oath, issue a warrant for searching, in the day time, any house,

&c., within the settlement in which such gun-powder is suspected to be, or to be made.—Gun-powder or mixed material exceeding the quantities allowed, found, together with the barrels or vessels, shall be seized and removed, and detained by the searchers, until adjudged, whether liable to forfeiture.

Searchers or seizers not liable to any suit, &c., for detainer, &c. except for wilful acts, or neglects.

7. Seizures may be summarily determined by two Justices, who may summon parties offending, and upon appearance, or default, examine and give judgment for condemnation of the gun-powder, barrels, vessels and things seized and forfeited. And issue warrants for sale thereof.—Judgments to be final.

A moiety of produce of sale to go to the Crown, residue to party discovering same.

8. Proviso, if no party shall appear within twenty days and claim, seizer to cause notice to be given in the *Calcutta Gazette*, if quantity seized exceed forty seers, if under, notice signed by one Justice, to be affixed at the Police Office, signifying day and time when the Justice will proceed to hear the matter.—Who may proceed to examine and give judgment of condemnation.—Judgment to be final, as if parties had been summoned.

9. Pecuniary forfeitures and penalties not exceeding 100 rupees, determinable by one, two or more Justices, whose judgment shall be final.

Justices required upon information of any forfeiture or penalty, to summon party accused, &c. to examine into the matter and give judgment. To issue warrants under their hands and seals for levying forfeitures, &c., upon the goods of offenders.—And sell same if not redeemed within ten days.—Rendering to the party overplus, if any.

And for want of sufficient distress, to imprison offenders in the house of correction, for not exceeding two months; A moiety of such forfeiture, &c. to go to the Crown, residue to informer.

10. When pecuniary forfeiture, &c. shall exceed 100 rupees, the same may be recovered by action of debt, &c., in the Supreme Court, in the name of the Clerk of the Crown. The whole of such forfeiture, &c., to go to the Crown.

11. Proviso, that Judges of the Supreme Court and Justices may, if they shall see cause, mitigate the penalties and forfeitures sued for before them respectively.

12. Proviso, that any thing herein contained, shall not extend to any person acting for or on behalf of the United Company.

Not to any gun-powder or materials for gun-powder collected, kept or manufactured, by persons thereunto authorized by the Company.

A. D. 1814.

Regulation passed on the 26th of July 1814, and registered the 11th of November, in the same year.

Section 1.—Recites Acts 13 G. 3, and 40 G. 3.

That in cases of assault, forcible entry or other injury, accompanied with force, not being felony, committed in the settlement of Fort William, against the person or property, and on complaint made to two Justices, they shall take cognizance of the same, and inflict a fine of not exceeding 40 rupees, and in default, commit offender to gaol, for not exceeding two months.

Fines to be paid to convicting Justices, who may award same to the aggrieved. Surplus to go to Crown.

2. If journeyman workman, or labourer, engaged for a term, abandon his service, before term out, or leave unfinished work contracted for, without due cause shewn to two Justices, to whom complaint shall be made, they may take cognizance thereof.

On conviction, offenders to be committed to gaol, or house of correction to hard labour, for not exceeding two months.

3. Persons having no ostensible mode of living, living idle, and without employment, and not endeavouring to get employment, and being able to work, or having means and not maintaining their wives and families, liable on oath of one witness, to be convicted before two Justices, who may make order of maintenance, and on non-compliance, offender to be committed to gaol, or to house of correction to hard labour, for not exceeding two months.

4. Persons having no ostensible means of livelihood, and being of evil fame, or reputed thieves, and found frequenting bazars, &c., and not able to give satisfactory account of themselves, and it appearing upon oath, that there is just ground to believe, that they were there with intent to commit felony, may be convicted by two Justices, and publicly whipped, or committed to house of correction to hard labour, for not exceeding three months.

NOTE.—For all former regulations repealed, or disallowed under the Sign Manual, see Rules, Orders, and Regulations, compiled by W. H. Smoult, original edition of 1819; a subsequent reprint was issued by another party, which is very inaccurate.

5. European or American seaman, being on shore without leave, or having deserted from ship, may, upon complaint on oath, by any of the officers of ship to one Justice, be apprehended by his warrant and detained and conveyed on board his ship.

Asiatic or African seaman so deserting or absenting himself, on like complaint, to be apprehended, and upon refusal to return on board, and no sufficient cause shewn, two Justices are empowered to take cognizance, &c., and inflict, on conviction, a fine not exceeding 50 rupees, or the amount of his impress, and commit the offender to gaol for not exceeding two months, nor less than one, unless fine paid.—Or, instead of fine, may commit such offender to house of correction to hard labour, for not exceeding thirty days, nor less than fourteen.

6. In cases of goods, chattels, money, bond, bill, note, &c., being stolen from any person, or person's house, &c., to the loss of which such person shall depose, *believing* the same to be his or her property, although he or she cannot positively identify the same; and the same being found upon or in the possession of any person, who shall not give a satisfactory account of his possession thereof to two Justices, they may, upon the oath of one witness, take cognizance thereof, and on conviction, inflict a fine not exceeding 100 sicca rupees for each offence.

Persons convicted and failing to pay the fine within one week, during which to be committed to safe custody, may be ordered to be publicly whipped, or in lieu of such fine or whipping, to be committed to the house of correction to hard labour, for not exceeding six months. (1)

7. No whipping to exceed 50 stripes.

A. D. 1814.

Regulation passed on the 28th of October 1814, and registered the 18th of November, in the same year.

Preamble,—Recites regulation of 1781, (2) to have been found insufficient, that it is necessary, that roads, streets, drains, &c. be made and opened and obstructions removed, encroachments and nuisances abated, and navigation of the river opened. That great numbers of persons go about

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(1) This section is repealed by Act No. 21, of 1839, see vol. 1, p. 377.

(2) See Abstract of that Rule, Smoult's Police Regulations.

armed with swords, &c. and strangers repair hither so armed, &c. who are frequently taken into the service of the inhabitants, and guilty of great violence.

Section 1. Recites Acts 13 G. 3, and 40 G. 3, and repeals regulation of 1781.

2. Persons throwing dirt or rubbish, &c. on the streets, or into drains, &c. or fastening scaffoldings, &c. or leaving out carriages, bricks, lime, &c. for four hours so as to occasion annoyance or obstruct the way, &c. To forfeit ten rupees for each day, the same shall continue.

Proviso, in favor of such as obtain a license from a magistrate, who is empowered and required to grant the same in writing, for making enclosures on the high way for purposes of building or repairs. Licenses not to exceed one years' duration, and to describe the limits of such enclosures, room always being left for the passage of carriages, &c., and a light placed on the enclosure from sunset to day break.

Any person removing such light, &c. to forfeit twenty rupees.

3. In case of any encroachments, &c. on or projections into the high ways, notice to be given to the owner or occupier by two Justices to remove them, &c. Description of encroachments, &c. to be removed, &c. In case of neglect to remove, &c. two Justices to cause such encroachments to be removed or abated.

And the owners or occupiers to forfeit a sum equal to the costs of removal, and a fine of not exceeding one hundred sicca rupees, for the erection or continuance thereof. Occupiers not liable to be drawn into suit by owners for obeying the orders of Justices.

4. Persons erecting or continuing any pent-house, bow window, porch, shed, &c. overhanging or encroaching upon streets, &c. to forfeit not exceeding 100 rupees, or any stall, &c. a sum not exceeding twenty sicca rupees. And all persons so offending as first described, or making encroachments on the river Hooghly, below high water mark, to forfeit also one hundred rupees for each day of the continuance of such encroachment, &c. after notice in writing. Offenders secondly described, to forfeit also a further sum not exceeding ten rupees daily, for continuance of encroachment after like notice; and encroachments, &c. to be removed by two Justices without notice. And the owner or occupier to forfeit charges of removal, &c. in addition to penalties.

5. Builders and workmen bringing old foundations forward so as to encroach on high ways, to forfeit not exceeding one

thousand rupees; and the owner a like penalty, after notice under the hands of two Justices to remove, who may also cause the same to be removed, &c. and the owner or occupier to forfeit charges of removal, &c.

Proviso, that no building, &c. of three months' standing, shall be so removed, or the owner affected by this rule, although otherwise subject to the law against nuisances.

6. Power vested in two Justices to make roads, drains, &c. subject to provisions after mentioned.

7. And to treat with all owners of houses, lands, &c. for the purchase of the same for such purposes.

8. And in case of such owners refusing to treat or not agreeing for the sale of such lands or houses, &c. as it may be necessary to purchase. To ascertain the value by a jury of twelve men, who shall be summoned by the sheriff, what satisfaction ought to be made, &c. for which purpose witnesses to be summoned; Jury to view the locus in quo, if required by owners, or if Justices think fit.—Sums assessed to be adjudged to be paid to such owners.—Such adjudication to be conclusive against all claims.

9. Where persons entitled in reversion or remainder, sums assessed to be settled to the same uses, &c. except the parties interested, wish otherwise.

10. In case of the title to property being disputed, sums assessed to be lodged with the Accountant General, in order to abide the event of order or decree of Supreme Court.

11. Form of summoning Juries.

Justices to issue warrants to Sheriffs.—To return twenty-four persons, inhabitants of Calcutta.—To appear at time and place named in warrants.—Of which ten days notice to be given to all parties interested.—Twelve Jurymen to be sworn out of the 24, in default of sufficient number, Sheriff or Deputy to return standers bye.—Proviso, that no property so valued shall be taken possession of by the Justices, till the full sum so assessed, be paid or tendered to the owners thereof. Challenges allowed.

Jury to remain empanelled till verdict given. And not appearing or refusing to be sworn, or departing before verdict, and witnesses disobeying summons or refusing to be examined, to be respectively fined from twenty to one hundred rupees, which fine, not being paid, to be levied by distress, &c.

12. Sheriff to be allowed three rupees for each summons, sixteen rupees for return, eighty rupees for attendance, to be paid by the Justices.

13. Verdicts and adjudications before the Justices to be sent to and kept by Clerk of the Peace, as records of the Quarter Sessions, true copies to be good evidence.

14. Persons of low condition coming armed to Calcutta, to deposit arms with the thanadar of the first thanna, (who shall give a receipt for the same,) and on departure, obtain the same upon such receipt.

Any such person appearing in the streets, &c., with arms, except in the service of persons authorized by Government to retain such armed men, or having obtained license, to forfeit arms, together with a fine not exceeding 20 rupees, —Thanadars or other officers of police, may seize such arms, and cite offender by word of mouth to attend before one of the Justices, who on the parties appearance, or in default thereof, on oath made of such citation, and non-appearance, may proceed to examination and judgment, &c., and condemn and sell the arms, and levy the penalty by distress, if not paid.

15. All forfeitures under this ordinance, not otherwise directed, shall on proof before two Justices, be levied by distress and sale of the goods and chattels of the offenders, under the warrants of such Justices. The overplus, if any, forfeitures and charges deducted, to be paid on demand to the offenders. In case of insufficient distress and penalties not paid, offenders to be committed to gaol for not exceeding six months, unless forfeitures &c., be sooner paid, forfeitures to be paid into the treasury, and disposed of by Justices at their Sessions.

16. Recites, that married women and female children unmarried, being under the age of 13 years, of the Mahomedan and Hindoo religion, have been enticed and subducted from their husbands, parents, or guardians. Declares that persons unlawfully taking away or causing to be taken away, or enticing away married women, or female children unmarried, and under 13 years of age, from and against the will of husbands, or parents, or guardins or others having the keeping of such female children, for the purpose of living in adultery with, or of prostituting, or disposing in marriage, of such wives, children, &c. against the will of their husbands, parents, &c., husbands, parents, &c. may complain to two Justices.

Persons so offending, to be fined not exceeding 200 rupees, and in default of paying the fine within one week, during which to be kept in custody, to be committed to the house of correction to hard labour for not exceeding six months.

A. D. 1816.

Regulation passed on the 23d of March 1816, and registered the 13th of April, in the same year.

Preamble.—Recites that several ships have been destroyed by fire, supposed to have been wilfully burnt by seamen.

Section 1.—If any ship, &c. employed for the conveyance of goods or passengers, whether in external or internal navigation, on board of which any seaman shall have been hired by the month or longer period, and shall at the time of any burning, &c. as after mentioned, have received any advance of wages or impress and such ship, &c. shall be prevented by fire, or any other means than the act of God, or the dangers of navigation, within the time for which such seaman shall have received advance or impress, from proceeding to her destined port, or upon intended voyage from the port of Calcutta. or continuing the same, such seaman, other than the Captain and mates, shall serve the time for which he shall have received advance or impress, on board of any other ship, &c, on any navigation of equal or less extent than the voyage intended for the ship, &c., burnt, &c., and on which he shall be ordered to go on board by the Captain or owner of the ship, for which he shall have received advance or impress. And upon refusal, or, having gone on board, shall desert or be wilfully absent without leave; two Justices, upon complaint, may take cognizance thereof. Upon conviction, may adjudge offender to be imprisoned in the house of correction and kept to hard labour, for not exceeding two months beyond the time, for which he had received advance or impress, at the time of desertion, &c., or to gaol for like period, &c.

2. Recites, that domestic servants have an easy mode of redress for assaults and violence committed against them by their masters, under the rule of the 11th November, 1814, that Masters have no tribunal of appeal for misconduct of servants, expedient to provide for the same.

That two Justices may, upon complaint made against any menial servant, for miscarriage, ill behaviour, insolence, or neglect of duty, take cognizance thereof.

Upon conviction may adjudge offender to be imprisoned in the house of correction, and kept to hard labour, for not exceeding two months, or to the common gaol for the like period.

A. D. 1816.

Regulation passed on the 1st of March 1816, and registered the 26th of the same month.

Preamble.—Recites disturbances by absenting seamen remaining in Calcutta.

Ordains, that if any British or foreign seaman of any ship lying in the river Hooghly, or in dock, shall leave or be absent therefrom without leave, or against the will of the Master or person in command, or continue on shore after leave expired, and be found in Calcutta; two Justices may issue their warrant to apprehend such seaman, and upon conviction, may commit him to the house of correction to hard labour, or to the common gaol for not exceeding thirty days.

A. D. 1816.

Regulation passed on the 14th of June 1816, and registered the 8th of July, in the same year.

Preamble.—Recites, that the introduction of spirituous liquors and wines into Fort William, without the permission of the commanding officer, had occasioned much disorder amongst the European soldiers, &c.

Ordains, that if any person shall take or be detected in attempting to take into the garrison of Fort William, from Calcutta, any spirituous liquors or wine, without the license of the commanding officer, or other person authorized; unless the same belong to some commissioned officer, or other person above the rank of a private soldier, or a non-commissioned officer; two Justices may issue their summons or warrant for bringing the offender and the liquors and vessels before them. Upon conviction adjudge forfeiture of liquor and vessels; and inflict upon offender a fine not exceeding 100 rs. In default offender to be imprisoned for not exceeding two months, in the common gaol; or house of correction to hard labour.

A. D. 1816.

A Regulation for ascertaining and fixing the wages to be paid to the seafaring men, belonging to the port of Calcutta, and for securing the same to the said men, as also for the better providing the ships and vessels navigating to and from the said port with seafaring men, passed on the 21st of June 1816, and registered the 24th of July, in the same year. (1)

Preamble.—Recites a representation made by the merchants and owners of ships, and underwriters, that great hardships, delays and unnecessary expence exist in procuring seafaring men from the conduct of ghaut serangs, whose impositions are equally injurious to the seamen as to themselves, and adverts to the destruction of ships by fire and suspicion attaching to the lascars, &c.

Rule of the 10th of March, 1783, found insufficient.

Section 1.—Recites Acts 13 Geo. 3, and 40 Geo. 3, and repeals, the rule of 1783. (2)

2. Fixes the rates of wages of seamen (*according to a table set out*) unless they shall voluntarily agree to a different rate.

Captains, &c. paying or contracting to pay a greater or less rate to forfeit 200 rupees for each person.

Impress money regulated according to the voyage, and to be paid by Registrar only.

Proviso, that no impress shall be paid, except to Captain and Mates of ships, under penalty of 250 rupees for each person, unless such seaman, &c. shall contract to serve the full time for which he shall receive impress remaining unexpired, in case the ship be prevented by fire or otherwise than the act of God, &c. from proceeding to destined port, or upon her voyage, on board of any other ship destined on a voyage of equal or less duration, and on which he shall be ordered to go:

Balance of impress to be carried to account.

3. Marine Registry office established.

Registrar appointed by Governor-General-in-Council and removeable at pleasure, salary 1000 rupees per month, to be paid out of funds after mentioned.

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(1). This Regulation and certain others subsequently passed relating to seamen, were repealed by a Regulation of the 28th July 1825. The abstract here inserted, is given in order to shew what provisions have been in force in regard to the seamen of this port, the subject having lately attracted notice.

(2). See Smoult's compilation of these Regulations, where it will be observed, in a note p. xlix. that this rule had been, in fact, disallowed under Sign Manual in 1785, and also repealed by a rule of that year.

4. The names of all seafaring men belonging to the port of Calcutta, to be registered in the office.—Mode of registry.—One book for seamen in the Company's service.—Other books for seamen generally.—Certificate thereof to be given to each seaman registered.

5. No master, &c., to employ seamen or pay impress, except through the registrar, unless upon refusal or neglect of registrar.—If the Company or their agents, or any master, &c. deliver to the Registrar a notice in writing, specifying the number and description of men, name of vessel, where she lies and destination, fifteen days before required, and pay the impress, Registrar shall comply therewith, and seamen shipped, shall forthwith do their duties, and on return, remain on board, until the vessel shall have been moored forty-eight hours unless relieved; deserters before that period, to forfeit one, month's pay, to be retained out of wages due.

6. Registrar refusing or neglecting to ship seamen, according to notice, to repay impress with interest at 12 per cent, and so in proportion for deficiency of number shipped.

7. Masters, commanders, or owners, shall, within one week after arrival, deliver to Registrar a list of crew, containing a description of their offices, ability and wages, deaths and desertions, and, except in case of desertion, pay to Registrar the balance of wages due, to be paid to them on demand, or to the representatives of men deceased.

8. Registrar to keep a separate account, countersigned by party paying the same, of all monies received, due to deceased men, and how applied, open to inspection, and if required, verified on oath.

9. Registrar may enter on board ship in the day time and muster and examine crew; and if denied may so enter under an order of a Justice of the Peace.

10. No master, &c., after voyage completed, and forty eight hours after ship moored, shall detain any seaman, who has discharged his time.

Proviso, that if any seaman be desirous to remain, he may be retained as a batta lascar, upon notice to the Registrar attested by the Captain and two principal officers. But masters, &c., so detaining to pay to the Registrar all impress and wages due or to become due, &c. No payment to be made to seamen except by the Registrar, unless the vessel shall not return within the time for which impress received, when the master may make

payments on account, to be verified by entries in the log book, and attested by two principal officers and two seamen.

11. Registrar on discharging crews, to enquire how commanding officers and crew have conducted themselves, and make a full entry, and if any of the crew have conducted themselves, so as to cause injury to the ship or cargo, &c., or render same liable thereto, Registrar to retain not exceeding one month's wages.

12. Registrar discovering that the commander or any mate or officer has conducted himself with inhumanity or undue severity to seamen, to report same to some Justice of the Peace, or in any very flagrant case, to the Governor General in Council.

13. Two Justices may bind out boys descended from European fathers, or European fathers and mothers, supported by any orphan or charitable school, to be apprentices to the sea service, to any owner of any vessel belonging to the port for five years.

Owners to provide themselves with apprentices, or if not able, to apply to Registrar, and accept of apprentices offered, to the number of one apprentice for each hundred tons.—And shall not send his ship to sea without such number, if procurable.—Applications to be made one month before sailing, under penalty of one hundred rupees per each deficiency.

14. Owners to place apprentices under the exclusive authority of the Commander, who shall duly instruct them.—Owners bound to provide apprentices with clothing and food at sea, and food, clothing and lodging on shore. Two Justices may hear and redress complaints between owners and apprentices and dissolve apprenticeship upon just cause.

15. Mates leaving their ships without permission, after commencement to load or unload, to forfeit five rupees per hour during absence.

16. Registrar to enter into bond with a surety for performance of duties and application of funds.

17. If any seamen shall, by writing, attested by two of his officers in the Registry office, authorize the Registrar to receive any portion of his wages not exceeding one third, for the use of any person to be therein named; owners, upon request, to pay the same to the Registrar without proof, &c.

18. No person to act as batta lascar without being registered and obtaining certificate.

'No batta lascar to accept more than seven rupees per month, under penalty of double the sum received beyond said rate.

'19. Lascars and other seamen having been duly registered and not withdrawn, refusing to act as such unless greater wages than before mentioned are given, or agreed to be given.—Two Justices may take cognizance thereof. Upon conviction, imprison offenders in the common gaol, for not exceeding two monthts, or in house of correction to hard labour for like period.

20. Owners to pay for defraying the expences of the office, &c., two rupees for each seaman furnished.

21. If any ghaut serang or other person shall, from any sinister motive, or with intent to defeat the execution of this ordinance, persuade or endeavour to persuade, or prevent any seaman, &c., from registering his name in the office, or from acting as a seaman, &c. so registered.—Two Justices may take cognizance thereof, upon conviction, inflict a fine not exceeding 500 rupees, in default commit the party to the common gaol for not exceeding two months, or to the house of correction to hard labour for like period.

22. No master, &c., of foreign vessel to take on board any seaman, but such as shall have arrived on board his ship, unless through the Registrar, and every master of such ship, with the supercargo or other officers to execute a bond to the company in the sum of 500 rupees for each Asiatic seaman received, conditioned, to return the said seaman, and produce him to the Registrar, on ship's return, or, within the space of two years, to produce a certificate of an English Consul, or two respectable merchants of seaman's death. And no pilot to be granted, if any seaman on board not received through the Registrar.

23. Penalties how to be recovered. Not exceeding 250 rupees in the Court of Requests, exceeding 250 rupees in the Supreme Court.

Proviso, that if owners cannot procure seafaring men within the time aforesaid from the Registrar, they may procure them in any other manner, but shall not give them any greater impress or wages than as aforesaid, under the penalty aforesaid.

A. D. 1816.

Regulation passed on the 19th October 1816, and registered the 12th of November, in the same year.

Preamble.—Recites, great losses to be sustained by tradesmen and others from the frauds of workmen employed by them.

Section 1.—Ordains, that if any journeyman working artificer, &c. having contracted with any person to commence any work, at any given time or place within the settlement, shall not attend accordingly, or shall be absent, or neglect or refuse to work, during the hours agreed upon, or the usual hours of work, unless for due cause shewn to two Justices, they may take cognizance thereof.

2. If any journeyman working artificer, &c. or other persons, shall combine to obtain an advance of or raise the rate of wages, or lessen or alter the hours of working, or to decrease the quantity of work, or by giving money, or otherwise wilfully prevent or endeavour to prevent any unhired or unemployed journeyman working artificer, &c. from hiring himself, or wilfully persuade or endeavour to persuade, &c. any hired journeyman working artificer, &c. to quit his service, except for due cause shewn to two Justices, they may take cognizance thereof, &c.

3. If any journeyman working artificer, &c. employed under a master in the same business, shall fraudulently purloin, &c. any materials delivered to him to work before or after worked up, or any article delivered to him by any person to clean, alter or repair, or withhold the same, or fraudulently purloin, &c. any working tools, belonging to his master, two Justices may take cognizance, thereof, &c.

4. Upon all convictions under this rule, two Justices may inflict a fine of 100 rupees on offender, and in default commit to gaol, or house of correction to hard labour for not exceeding 60 days, or if the case require it, may commit offender to the house of correction, to hard labour for not exceeding 60 days.

A. D. 1817.

Regulation passed on the 28th of March 1817, and registered the 21st of April, in the same year.

Preamble.—Recites, that the stealing of lead, iron, copper, &c. fixed to or being in or upon houses, out-houses, godowns, &c. and also from ships, &c. upon the river Hooghly, and from

wharfs, &c. in the settlement, to become a great and notorious evil, by reason of the difficulty of apprehending and convicting the thieves and discovering the buyers or receivers.' Recites the necessity of treating buyers and receivers thereof as principals.

Section 1.—Any Justice of the Peace may, upon complaint on oath, by any credible person, that there is reasonable cause to suspect stolen lead, iron, copper, &c. to be concealed in any dwelling house, out-house, &c. or in any ship, &c. by warrant cause such dwelling house, &c. to be searched in the day time, and if any lead, &c. suspected to be stolen, shall be found therein, cause the same, and the person in whose house, &c. the same shall be found, to be brought before two or more Justices. And if such person shall not give satisfactory account to them, of their possession of the same, or shall not within convenient time produce the party from whom the same was bought or received, such Justices having taken evidence thereof, may adjudge the offender guilty of a misdemeanor.

2. Any constable, thanadar, &c. may apprehend persons reasonably suspected of having or carrying, &c. any lead, iron, &c. suspected to be stolen or unlawfully come by, and convey the same with the parties before two Justices, and if the party apprehend, shall not produce the person from whom the same was bought or received, or some credible witness to depose on oath to the sale or delivery, or shall not give satisfactory account of the possession of the same such Justices, having taken evidence thereof, may adjudge the offender guilty of a misdemeanor.

3. Upon conviction of any offender of either of the said misdemeanors, two Justices may cause such lead, iron, &c. to be deposited at their office, for not exceeding 30 days, and in the meantime, affix notice in English and Bengalee, at the office, describing such lead, &c. and where same deposited, that the owner may claim the same, and upon proof of title to the satisfaction of two Justices, they shall order restitution thereof, after payment of the reasonable charges attending the same.

If after 30 days no owner, &c. shall prove his title, the same to be sold by public auction, and after deducting charges, a moiety of the proceeds to be given to the person or persons principally instrumental to the conviction,

Residue to the Select Vestry of St. John's Cathedral, for the benefit of the poor.

4. All persons to whom any lead, iron, &c. shall be offered for sale, pawn or delivery, are required (upon reasonable cause

approved by a Justice, to suspect that the same was stolen or unlawfully come by,) to apprehend and carry before a Justice, the party so offering the same, together with such lead, &c. And the party so apprehended, shall be dealt with, and such lead, &c. disposed as if the party had been apprehended by a constable, &c.

5. Upon all convictions under this rule before two Justices, they may inflict a fine not exceeding 100 rupees, for the first offence, for the second, 200 rupees, and for every subsequent offence not exceeding 400 rupees, one moiety to the informer and persons principally instrumental to the conviction.

Residue to the Select Vestry of St. John's Cathedral for the use of the poor.

In case offender shall not within three days (during which to be detained in custody,) pay the fine, Justices may commit him to the gaol or house of correction, to hard labour, without bail, for not exceeding two months for the first offence, for the second, four months, and for each subsequent offence not exceeding six months.

Proviso, that this rule shall not extend to cases where the said metals, &c. shall exceed in value 500 rupees.

6. If any goods, wares, or merchandize, or other property shall be found upon or in the possession of any artificer, &c. or servant employed, or been recently employed, on any wharf or in any usual dockyard, &c. (which goods, &c. shall be of the same description as those vended, kept or used on any such wharf, &c. where such person shall have been employed.)

Or if any such goods, &c. shall be found in the possession of any person whomsoever carrying away the same clandestinely, with an evil intent, from any such wharf, &c. or assisting such person in any such act, (such goods, &c. being of the same description as aforesaid) and if there shall appear to two Justices, just reason to suspect that such goods, &c. have been stolen, &c. from such wharf, &c. and if such person shall not be able to give to such two Justices a satisfactory account of his possession thereof; They may upon oath of one or more credible witnesses take cognizance of the same offences respectively. Upon conviction commit offenders, to the common gaol or house of correction, to hard labour for not exceeding 6 months. And deliver the property so suspected to have been stolen, &c. to such person as shall appear to be the rightful owner thereof.

Proviso, that this clause shall not extend to cases where such goods, &c. shall exceed in value 500 rupees.

A. D. 1818.

Regulation passed on the 13th January 1818, and registered the 7th of February, in the same year.

Preamble.—Recites that divers persons have opened and established under the denomination of Hotels, Coffee Houses, Taverns, &c. Houses for the public resort of seamen, and the same being unlicensed and uncontrolled by the magistracy, conduce to the desertion of seamen and of soldiers. And also the duties on the sale of distilled Liquors have been evaded by the proprietors and keepers of such houses.

Section 1. No person to open or establish, or keep open any hotel, &c. or any house of public resort and entertainment within Calcutta, without license from two Justices for one year, resumable within that period, in case of misconduct, and which may be refused to any person, who shall not have taken out the usual license for vending spirituous liquors. Two Justices may upon complaint that any such hotel, &c. has been opened, &c. without such license take cognizance thereof.

2. Persons upon obtaining license to enter into recognizance in the penalty of 400 rupees, with two sufficient sureties in 200 rupees each conditioned that they shall use their utmost endeavours to prevent gaming, drunkenness, &c. within their houses, and report daily in writing to one of the Justices the names and qualities of all persons residing therein, and that they will not knowingly receive or harbour such deserters, or any persons notoriously defamed of, or for theft or other felony, and that they will give notice to a Justice or constable, &c. of any such person so resorting to their houses.

3. Justices and their officers may apprehend every mariner, &c. below the rank of mate, found on shore within the settlement without leave in writing from the commander or other officer of his ship, or unless he produce a written discharge. And Justices may detain every such mariner, &c. not shewing lawful cause for being on shore, to be dealt with as a deserter or absentee, according to the rules in force.

4. Justices to regulate the landing and embarking of seamen at fixed and particular ghauts. Such ghauts to be indicated by a Board, fixed in some conspicuous place there. Constables, &c. to apprehend, detain and carry before two Justices, any mariner, &c. landing or embarking at any other ghauts.

5. Upon convictions before two Justices; They may inflict upon offenders under the 1st section, a fine not exceeding 100

rupees, and in default commit to gaol or house of correction to hard labour, for not exceeding one month. And upon offenders under the 4th section, a fine not exceeding 5 rupees, and in default commit to gaol for not exceeding seven days. Fines to be paid to committing magistrates, for the use of the Crown.

6. Recites rule of the 11th of November 1814. section 1. (1)

Recites that the punishment thereby ordained to be inflicted on the offenders, therein mentioned, had been found insufficient, and therefore ordains that any two Justices in case of such conviction of any assault, forcible entry, or other injury accompanied with force, not being felony, may inflict a fine not exceeding 100 sicca rupees, and in default commit the offender to gaol, for not exceeding 3 months. And award the whole or any part of such fine to the party aggrieved. If surplus to go to the Crown.

A. D. 1819.

Regulation passed on the 9th of July 1819, and registered the 22d of October, in the same year.

Preamble.—Recites great losses and impediments occurring in the daily business of the Mint, from fraud and neglect of duty in workmen.

Section 1. Ordains, that if any working artificer, &c. employed in the Mint, shall not attend and commence work, or absent himself from or neglect, or refuse to work, according to the regulations of the Mint, unless for reasonable cause to be allowed by two Justices; or if any lascars, &c. having accepted from any officer or other person employed by the Mint, money or hire in advance for work, &c. shall neglect or refuse to attend, &c. without sufficient cause. Two Justices may take cognizance thereof. May inflict upon offenders of the first description, a fine not exceeding 100 rupees, and in default commit to common gaol or house of correction to hard labour, for not exceeding forty days, or for like period to house of correction to hard labour. On conviction of lascars, &c. may impose a fine not exceeding twenty rupees. And commit as aforesaid, for not exceeding one month, or to house of correction to hard labour for same period.

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(1) See *ante* p. cx,

2. If any artificer, &c. shall be charged with fraudulently purloining or secreting about his person within the Mint, any ingot, &c. with which he shall have been entrusted in the course of his business, &c. any Justice may summon the offender to appear before two Justices, who, on conviction, may inflict a fine not exceeding double the amount of the value of the metal, or sentence him to hard labour in the house of correction for four months, or to be publicly whipped at the Mint.

3. If any refiner, &c. shall without permission of Mint Master, knowingly carry, &c. or cause to be carried, &c. copper or other inferior metal into the Mint, to be considered a misdemeanor, two Justices may take cognizance thereof, on conviction may inflict a fine not exceeding 50 rupees for every sicca weight of copper or other inferior metal; and order offender to be publicly whipped at the Mint.

4. If any principal melter shall wilfully deteriorate or debase, &c. the fineness of the precious metal, two Justices may take cognizance thereof, and inflict a fine to twice the amount of deterioration, to be retained out of security, or deposit, or withheld from wages. Upon second offence inflict the punishment of public whipping at the Mint, and a fine of 50 rupees, and in default of payment to commit to gaol, or house of correction to hard labour, for not exceeding four months.

5. If any persons of the description herein mentioned shall be guilty of any of the offences specified in the second section of the Bye law of the 19th of October 1816, (1) he or they shall be liable to be prosecuted, convicted and punished conformably to the said Bye-law.

Proviso, that in case of punishment by whipping no greater number than fifty stripes to be inflicted.

A. D. 1820.

Regulation passed on the 4th of March, 1820, and registered the 17th of April, in the same year.

Preamble.—Recites, that the pernicious practice of gaming among inferior tradesmen, shopkeepers, mechanics and others, had become a great and notorious evil.

Section 1.—Ordains, that if any person, by himself or herself, his or her agent or servant, shall hold, occupy or use any house, hut, &c., for the purpose of common or promiscuous gaming for

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(1) See *ante* p. cxxi.

money or other valuable matter or reward, or shall suffer the same, any Justice may, upon complaint issue his summons against the party. Upon appearance two Justices may take cognizance of the offence. Upon conviction may impose upon offender a fine not exceeding 100 rupees, in default of payment within one hour may convict to the common gaol or house of correction to hard labour, for not exceeding three months, or at discretion in first instance to the common gaol or house of correction to hard labour for same period. If any one shall game or join in, bet, or abet, or be present for any such purposes in any public street, road, &c. or if any person being in or at any such house, hut, &c. had held, &c. for the purposes aforesaid, shall game, &c. or join in, bet or abet, or be present for any such purpose, any constable, town serjeant, &c. may apprehend and take such person before a Justice of the Peace, to be dealt with as after mentioned; any Justice may, upon complaint, issue his summons against the party, and any two Justices may take cognizance of the offence. Upon conviction may impose upon offenders, fine not exceeding 50 rupees, in default of payment within one hour, may commit to the common gaol or house of correction, to hard labour for not exceeding three months, or to the common gaol or house of correction, to hard labour for same period.

A. D. 1821.

Regulation passed on the 31st of August 1821, *and registered the 13th of November, in the same year.*

Section 1.—Persons within the limits of Calcutta and settlement of Fort William, knowingly detaining, buying or exchanging, or receiving from any soldier or deserter, or others, any arms, &c. or causing the color of any such clothes, to be changed, or procuring, or enticing any soldier or other person to sell or dispose of any such arms, &c. may be summoned before any two magistrates. In case of conviction to be punished by fine, not exceeding 50 rupees for each offence, and on non-payment to be committed to the common goal or house of correction, to hard labour, for not exceeding three calendar months, or publicly or privately whipped.

2. Whipping not to exceed 50 stripes.

A. D. 1827.

Regulation for regulating the number and fare of Teeka Palankeens and Teeka Bearers, in the town of Calcutta, passed on the 8th of March, 1827, and registered the 27th of April, in the same year.

Section 1.—No person shall let out or keep for hire, any teeka palankeen, or serve as a teeka bearer without obtaining a license for that purpose, signed by two Justices.

2. Justices to license such number of teeka palankeens, and teeka bearers, as they shall deem sufficient, for the term of one year. Licenses may be recalled in cases of misconduct. Penalty for letting out or keeping for hire teeka palankeens, or for serving as teeka bearer, without having obtained a license.

3. Palankeens to be numbered, and teeka bearers to wear badges. Penalty in case of neglect.

4. Four Justices from time to time to fix the rates and hire of teeka palankeens and teeka bearers. Rates to be published for fifteen days before they are to be considered as fixed. Owners or persons in charge of teeka palankeens refusing to let out the same at the rate fixed, or requiring any larger rate, the person licensed to forfeit the sum of 20 rupees, and in default of payment may be committed to the common gaol or house of correction, for one month. Teeka bearers refusing to serve or requiring any larger hire, to forfeit ten rupees, and in default of payment may be committed to the common gaol or house of correction, for 15 days.

Proviso, that rate of hire shall be previously tendered.

5. Persons refusing to pay the rate fixed, or breaking, or injuring palankeens, to forfeit 50 rupees, and in default be committed to the common gaol for 14 days. If fine paid, Justices may award to party complaining whole or any part.

6. Owners of teeka palankeens or teeka bearers making use of insolent or abusive language, or misconducting themselves, may be fined to the amount of 10 rupees, and in default of payment, may be committed to the common gaol or house of correction for 14 days.

7. Justices to fix convenient places as stands for teeka palankeens and teeka bearers. Notice of which to be published for fifteen days, before such places considered as fixed. Owners of teeka palankeens or teeka bearers waiting for hire at any places not so fixed, shall forfeit the sum of 10 rupees, and in default of payment be committed to common gaol or house of correction for fourteen days.

8. All offences to be heard and determined by two or more Justices. Forfeitures to be transmitted to General Treasury, and disposed of by Justices at their General Quarter, or other Sessions.

9. Provided, that any person without license may hire or let to hire any palankeen, for a month, &c.

A. D. 1829.

A Regulation for consolidating into one regulation with modifications, the existing enactments relating to the collection of Stamp Duties, passed on the 16th June 1829, corresponding with the 4th Assar 1236, Bengal Era; the 29th Jeyte 1236, Fusly; the 5th Assar 1236, Willaity; the 14th Jeyte 1886, Sumbut, and the 13th Zehijja 1244, Higeree.

Preamble and Section 1.—The following rules to be in force, within the provinces, subject to the Presidency of Fort William.

2. Provisions of former regulations rescinded.

3. *First.* Stamp Duties to be levied and paid on deeds, &c., as in schedule A. annexed.

No deed, instrument or bond executed in any place on the continent of India, to be pleaded or given in evidence or filed in any Court of Judicature within the provinces subject to the Presidency of Fort William, (1) unless written on paper, &c. bearing the prescribed stamp.

Second. No exception on account of over-value, nor to prior deeds if stamped as prescribed at the date of execution.

Third. Nor on account of a different dye in use in Calcutta, being impressed on a deed intended for the Mofussil.

4. Authentication of stamped paper to be made as ordered by Governor General in Council.

Collectors and venders to have copy of orders on the subject, and venders giving out paper without authentication when required, to forfeit one hundred rupees.

5. *First.* General superintendence to be vested in such Board or Commission, as Governor General in Council may direct.

He may also distribute the duties of superintendence amongst more than one authority.

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(1) Relates to the Company's Courts only.

Second. A Stamp Office to be established under charge of superintendent of stamps, subject to a Board or other controlling authority.

6 *First.* Stamps how to be impressed and where. Counter stamp.

Second. Board to cause proper stamps to be provided.

Third. Board to alter the dyes from time to time. But subject in all things to the orders of the Governor General in Council.

7. The Collector of the stamp duties to be vested in the Collectors of land revenue, or other officers appointed by Government.

8. *First.* How to be supplied with stamps.

Second. Collectors responsible for all stamped papers entrusted to them.

9. *First.* Venders of stamps how to be appointed.

Second. No person shall publicly sell stamps without license or special authority from the Board.

Penalty for the breach of this rule. But persons purchasing stamp paper may transfer the same.

10. *First.* Venders to give security for the due discharge of their duty.

Second. Licenses and schedule of stamp duties to be stuck up in venders' shops.

Third. Accounts to be kept by venders and produced to Collectors when required. Money received by venders to be regularly accounted for. Accounts and stamps to be produced for inspection when required.

Fourth. Penalties for breach of above rules by venders.

Fifth. Venders to realize duty before delivering stamp.

Penalty for selling or delivering stamps without receipt of full duty.

Sixth. Venders to endorse the date of sale and delivery of stamps sold by them, also name of the purchaser.

Penalty for neglect in so doing.

Seventh. Penalty for falsification of date.

Eighth. Penalty for refusal or wilful delay to deliver stamps.

Ninth. Penalty for exaction of price or consideration in excess of duty.

Tenth. Collectors may require collateral security from venders.

Eleventh. On removal or resignation of vender all stampt paper, &c. in store, money, and writings to be delivered to Collector.

Penalty for refusal.

Twelfth. Course to be followed on death of vender for demand of store from his representatives. Penalty for refusal of representatives to deliver or allow search.

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Second. Application in such cases to be preferred by the owner of the stamps to Collector, who may report to Board. Power to Board to substitute equivalent. Restriction of abuse to stamps exceeding ten rupees in value, and applications made within six weeks.

13. *First.* Penalty for filing or recording paper stampt, but not duly signed and endorsed.

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Second. Persons discovering forged stamps in their possession, how to proceed.

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Second. If no attempt to evade payment of duty, and brought to be stamped. Within thirty days, double duty.

Third. If after thirty days, five times the duty.

Fourth. If suspicion of evasion attach.—Penalty of ten times the value.

Fifth. Deeds presented to be stampt more than three months after execution, or six months after promulgation of this

regulation.—To be stamped at the Board's discretion.—Fine not to be less than ten times the stamp.

15. *First* Preliminary investigation by Collectors.—Power of modifying, confirming, and reversing vested in the controling authority, whose decision shall be final.

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